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# The Pragmatics of Linguistic Injustice

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Ashley Lauren Pennington

A thesis submitted in partial fulfilment of the requirements for the degree of  
Doctor of Philosophy

The University of Sheffield  
Faculty of Arts and Humanities  
Department of Philosophy

September, 2017



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## Abstract

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In this thesis, I examine a particular kind of breakdown that occurs when a person with relatively little social power is unable to do ordinary things with their words. Specifically, I look at a model for understanding unjust pragmatic dysfunction, which is a kind of wrong that belongs to a wider class of injustices that are experienced through or in virtue of, language. This wider class of breakdowns I will call “linguistic injustice”. I will suggest that judgements about what a speaker is trying to do with their words can be undermined by culturally shared values and norms of behavior. I start with the work of Rae Langton, who puts forward a schema for which to understand silencing qua speech acts (the actions performed through and by speech), that builds upon J.L. Austin’s 1962 work *How To Do Things with Words*. I move on to present an altered account of these instances that attempts to describe how addressees are unable to accurately understand the speech acts of people from traditionally oppressed groups. Finally, I bring in sociolinguistic tools in order to help understand the mechanics of those failures I will call “illocutionary deafening”. This will allow for the careful examination of the way in which gender, race and class (among other factors) can lead to addressees’ failure to understand restrained black men, in the back of police cars—who are saying “I can’t breathe”—as genuine pleas for medical assistance.

## Acknowledgments

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There are a great many people to thank for their various contributions to my personal and professional development. Without these people, I would have never thought to shove everything I owned into several (six) suitcases (each nearly 30 kg.) nearly 7,000 miles away, to try and become a philosopher. My mother, Shelley Victoria Pennington, and my father, Malcolm Bradley Pennington gave me the support—material and emotional—to embark on such an adventure. They are my best friends, and my greatest heroes. It is difficult to find the words to communicate my gratitude and love for them both. Without either of them, I'd probably still be working at a job I hated, and living in their home. They gave me the bravery to write this, and for that, I cannot be more grateful.

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*Dedicated to Vivian Ardell Wynkoop and Marjorie Ketchum*

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## Introduction

### *On Linguistic Injustice and the Road Ahead*

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In “Speech Acts and Unspeakable Acts” (1993; 2009)<sup>1</sup> Rae Langton presents J.L. Austin’s proposals for how one might perform actions with language (Austin, 1962). She sets out his three main categories of speech acts: locutionary acts: the act performed in uttering a sentence with a particular meaning; perlocutionary acts: the effects of such utterances; and finally, illocutionary acts: the actions that are performed in the utterance itself. Her aim in setting out such a schema is to try to explain how pornography may both silence and subordinate women. Over the course of this thesis, I plan to further explore how one might, more generally, use speech act theory but also other resources from linguistics to conceptualize silencing and propose a way in which Langton’s work might apply to cases outside of the ones she considers. By the last chapter I hope to demonstrate that the breakdown between intended and actual speech acts can be a deadly force that shapes the lives of those affected and serves to further enhance their subordinated status.

In chapter one I will present Langton’s proposal for treating pornography as speech. If speech is a subset of a larger category of action as Austin (1962) suggests, then the best way to interpret claims by Catharine MacKinnon that pornography is speech, is to look at it as a speech act—or so Langton posits.<sup>2</sup> Speech act theory may provide, Langton suggests, an understanding of how pornography may not only be a possible cause of women’s subordination but how it may actually *constitute* it.<sup>3</sup> Perhaps it is the case that pornography teaches men—as the primary consumers and producers of pornography<sup>4</sup>-- that women *just don’t* refuse sex. If this is the case, then it may be plausible to think that when faced with the utterance “no” in response to sexual advances, the man in question may fail to recognize it for what it is: a refusal of sex.

In the second chapter, we will look at what Langton sets out as the political implications of her proposal. She takes on trying to explain and understand the claim made by MacKinnon (among others) that the free speech of men silences the free speech of women.<sup>5</sup> In defending pornographic utterances under the banner of the First Amendment,<sup>6</sup> feminists often frame the problem at hand as a conflict between two groups’ rights to free speech. If we use Langton’s speech-act-theoretic model to understand the silencing claim, she states, then feminists can legitimately argue that the silencing of women’s refusals is not merely a metaphorical silencing, but a literal one. In addition to this, Langton proposes that it may be also be useful to understand the subordination claim as a conflict between the free speech of men and the equality of women. Put in this way, the polemic pits the First Amendment

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<sup>1</sup> This essay was first published in *Philosophy and Public Affairs* in 1993, and then republished in Langton’s collected essays in *Sexual Solipsism* (2009). I will use this latter reference throughout the thesis.

<sup>2</sup> Langton, R. (2009) “Speech Acts and Unspeakable Acts.” In: *Sexual Solipsism* 2<sup>nd</sup> Ed. Oxford: Oxford University Press. 25.

<sup>3</sup> Ibid.

<sup>4</sup> Langton (2009): 26.

<sup>5</sup> Langton (2009): 29.

<sup>6</sup> The discussion regarding free speech in this literature seems to ground itself in American First Amendment jurisprudence, despite the participant’s individual nationality or country of residence. I will, therefore, ground the discussion in chapter two largely in this context as well.



rights of men against the Fourteenth Amendment rights of women. Langton states that, “The claim that pornography silences women, expresses a different conflict, one within *liberty itself*.<sup>7</sup> Viewed thus, the ordinance poses an apparent conflict between the liberty of men to produce and consume pornography, and the liberty of women to speak.”<sup>8</sup>

It is these claims that we will examine in chapter two. Specifically, we will consider a criticism of such arguments made by Daniel Jacobson in his 1995 paper, “Freedom of Speech Acts? A Response to Langton.”<sup>9</sup> Here Jacobson claims that Langton is misguided at best, taking her to claim that one should have the right to perform any speech act one chooses. Specifically, he looks at her claim that the freedom of women to perform an illocutionary act of refusal is a First Amendment right. He sets out J.S. Mill’s conception of protected political speech, that he claims grounds such First Amendment rights. The main issue Jacobson raises (1995) is that the freedom to perform any illocution one may wish is 1) not protected under the First Amendment, and 2) that it seems counter to liberal values to allow for such a protection<sup>10</sup>—for some of the same reasons that feminists argue for regulation of pornography: if a liberal state allowed for the freedom to perform any illocutionary act one wishes, behaviors such as hiring someone to kill a spouse, convincing someone to behave violently and so on, would all be protected speech. There are a great many things one may want to do with their words, and some of these things are important to moving through the world, but the right to do all of them is not protected under the First Amendment, according to Jacobson.

Following the presentation of Jacobson’s criticisms, I will detail Langton’s response. In their 1998 paper, “Free Speech and Illocution: A Response to Jacobson.” Jennifer Hornsby and Langton argue that far from proposing that all illocutionary acts should receive protection under the First Amendment, Langton suggests that there are some illocutionary acts that one may want to privilege over others for similar reasons that one may want to protect political speech: that half the population will, no matter what they do, be subject to sexual violence as a result of what the other half of the population takes to be a fact of the matter: that women don’t refuse sex.

From here, I will consider how one might justify the regulation of pornography in contexts that claim liberal values and prioritize the protection of free speech. I suggest that perhaps it is best to look at pornographic utterances (as a whole) less like political speech, and more like commercial speech. There is a history of regulating what can and cannot be said in advertisements. Even in the United States, where free speech is sacrosanct, advertisements for cigarettes on television and radio have been banned since 1970, over concerns for public health. Likewise, the Food and Drug Administration regulates claims made by drug makers, food companies and producers of herbal supplements. Though the justification for such restrictions and regulations is grounded in public health concerns, what kind of claims such companies are allowed to make are strictly controlled in many circumstances. This includes the regulation of false or misleading claims about products, which demonstrates that there is at least one reason a liberal state may find itself regulating not just what kind of action the utterance is, but the content of the speech as well, in order to further other liberal values. Though my argument for treating pornography more like commercial speech than political speech does not succeed as it stands, I believe it demonstrates that there are many values that the liberal state balances, which gives us an opening to raise the issues of unjust illocutionary disablement as a serious issue, that may affect public health and wellbeing.

Ultimately, my argument for treating pornography more like commercial speech than political speech does not work. I do believe, however, that Langton’s suggestion that such instances of unjust

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<sup>7</sup> Emphasis added.

<sup>8</sup> Langton (2009): 29-30.

<sup>9</sup> Jacobson, D. (1995) “Freedom of Speech Acts? A Response to Langton.” *Philosophy of Public Affairs*. (24) 64-79.

<sup>10</sup> Jacobson (1995): 65.

illocutionary disablement should be a cause for concern, a reasonable one. I then set aside concerns over free speech for the moment. What is salient for the failure of uptake in the case she describes is that the addressee believes that women “just don’t” perform refusals of sex. My primary concern is with the mechanics of this silencing.

There are two major elements of Langton’s silencing claims that we will look at in chapter three through five. Langton’s claims regarding the silencing of illocutionary acts, in particular, rest on the definition and role of uptake in Austinian speech act theory. If uptake, in the manner she describes, is not a necessary condition (of illocutionary success), then there has been no illocutionary disablement. In addition to this, it is not enough for there to be a failure of uptake on the illocutionary level, for the silencing to constitute either (1) unjust illocutionary disablement, or (2) a concern for liberal theorists. As we discuss in chapter one and two, there are a great many illocutionary acts that a great many people are unable to perform. Even if the speaker fails to secure uptake, it is the connection to an unjust state of affairs, and the relationship between the failure of uptake and subordination of the speaker that makes this kind of silencing unjust—and by extension, an interest to feminist philosophy of language. In chapter three we will look at the first of these two elements: uptake.

The main goal of chapter three is to determine what the role of uptake is, in constituting the illocutionary acts we intend. To do so we will consider both the claim that uptake is the hearer’s recognition of the speaker’s intended illocutionary act, as well as the claim that it is a necessary condition for illocutionary success. We will start with looking at an example presented to us by Daniel Jacobson (1995), that is meant to demonstrate that uptake is clearly not necessary to the success of speakers’ intended illocutionary acts. His general point is this: if one claims that uptake is a necessary condition, in the manner Langton suggests, we will leave the success of our illocutionary acts hostage to the whims of others. This, according to Jacobson, would be an absurd commitment.

Following this, we will discuss Langton’s response to Jacobson, in the same article we discussed in chapter two. Hornsby and Langton (1998) respond in two ways to Jacobson. They start by pointing out that the example he presents does not run counter to Langton’s earlier claims. Yes, we should say that the illocutionary act has succeeded in being the one intended by the speaker, but this is because they (the speaker) has secured uptake. The second point they make addresses Jacobson’s worries over leaving the success of our illocutionary acts hostage to the whims of others. They concede that this puts the success of intended illocutionary acts largely in the hands of one’s addressees, but state that this is simply the price of communication. Sometimes our interlocutors understand perfectly well what kind of thing we are trying to do with our words, and sometimes they make mistakes. Similarly, sometimes when our illocutionary acts don’t go as planned, it is because something out of our control and completely baffling has undermined the addressee’s ability to understand us.

Once we have discussed Hornsby and Langton’s responses to Jacobson, I will present my positive theory on the role and definition of uptake. My goal is to provide a better descriptive account of pragmatic dysfunction. To this end, I argue that while uptake is necessary for the success of the speech act, broadly construed, it is unlikely to function in the way that Langton describes. The primary reason for this is that the concept and term “illocutionary act” is not an ordinary language concept. If uptake is the recognition of a speaker’s intended illocutionary act, and something that is necessary to the utterance being the illocutionary act the speaker intends, either one of the following states of affairs must be the case: **at the very least** ordinary speakers must either possess the concept, with or without knowing the term. Because an *illocutionary act* is a very specific action (setting aside the fact that speech act theorists disagree about its definition), I contend that when an ordinary language user reports that they recognized that the person speaking “refused” they are referring generally to the utterance as a whole. In other words, I believe that—at least in part—cultural norms and conventions, as well as beliefs or guesses about what kind of thing (perlocutionary or illocutionary) the speaker is trying to perform. If the addressee guesses correctly, then the speaker has

secured uptake and the illocutionary act has succeeded as intended. Though this description may apply to other kinds of utterances, I am limiting the scope of this to non-institutional, informal speech acts and utterances.

At the end of chapter three I will suggest a way forward, that will not only help clarify my own view, but will also serve to address the issue of injustice and illocutionary disablement. I will outline the way in which my framework shifts the burden from the speaker to the addressee and illustrates how a hearer can shift from a competent interlocutor to an incompetent one. Because the hearer is undermined in his ability to understand an illocutionary act that was properly performed, it will be useful to rename this specific phenomenon. This is especially the case, as we will see in the last two chapters, when the addressee is from a social group with relatively more power than the speaker. In the case of sexual refusal, the man in question has internalized and subscribed to a false narrative about female sexuality—one that very well may be shared within or across cultures, but that ultimately undermines the ability of the addressee to understand the utterance for what it is. When this occurs, especially when it is the result of flawed or false, shared narratives of behavior, the result is what I call “illocutionary deafening”<sup>11</sup>: when a hearer or audience fails recognize an intended speech act that would otherwise be understood by a speaker of a different social group. I will develop this phenomenon in more detail in chapter five.

From introducing illocutionary deafening, I will move on to chapter four to discuss a possibly helpful tool, which should serve in developing a better understanding of how these unjust instances of silencing come out of and maintain cultural understandings of good and bad behavior. To do this, I will introduce a theory of cultural scripts developed by Anna Wierzbicka and other linguists to understand and describe the influence that cultural norms have on speech behavior. I will present the basics of the theory and present an example of the cultural scripts at work. The benefit of bringing cultural scripts into feminist pragmatics, is that they provide us with a way in which to articulate norms that may be either culture-specific, or relative to sub-groups within a single culture. It is these considerations that aid in understanding such cases as Langton’s. Rejecting an invitation of any kind, is typically a delicate and ritualized endeavor—at least to some extent. Perhaps the failure of the woman’s refusal fails in part because *there is no space for women to refuse sex* within the broader cultural context. If the man propositioning the woman accepts this as a rigid norm, then it is less surprising that given all of the information he has access to, he misunderstands in the way he does. He believes, falsely, that women always consent to sex because that’s what is culturally prescribed. This undermines his ability to understand the woman’s utterance as a refusal (in the general sense), and this leads the woman’s utterance to fail to be an illocutionary act of refusal.

Finally, in chapter five, I will attempt to do four things: (1) discuss the issue of over-generalization in the cultural scripts literature, (2) offer up a few tools to help ameliorate the problem, from feminist linguistics, (3) present work by Rebecca Kukla on what she calls “discursive injustice” that will aid in developing illocutionary deafening as a kind of linguistic injustice, more fully, and finally (4) present three examples of illocutionary deafening that are motivated by stereotyped and bias cultural norms on the part of the addressee(s). It is my aim, by presenting one example taken from Kukla (2014) that deals with gender, and two examples from the real-world that deal with race, to demonstrate how problematic cultural scripts undermine addressee competency to potentially deadly results. My primary interest in putting these elements together is to attempt to develop just how it comes to be the

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<sup>11</sup> It should be noted that though it is unfortunate that this term casts deafness as an inability to understand, this is the best term I’ve been able to come up with thus far. I have decided to use this phrase, in order to indicate an instance where the audience is rendered unable to hear the illocutionary act—where, to the audience, it might as well have not been performed at all (until I can find a more suitable term to replace it). Additionally, it seems to be the most natural term, since the literature already is framed in terms of ‘silencing’—though I am aware of the problems and would like to find a better one.

case that speakers such as victims of racialized police violence can very closely adhere to norms of speech behavior for interacting with law enforcement, and yet still be taken as putting law enforcement officers at risk.

Before beginning I would like to address an important point about using cultural scripts to explain such behavior as we will discuss. Though scripts articulate shared cultural understandings and expectations of behavior, subscribing to them does not lessen the burden of responsibility for the consequences of such misunderstandings. Not everyone within a community has to believe in or ascribe to the beliefs articulated by them. Furthermore, these scripts may be implicit or explicit rules or expectations of behavior and may or may not be consciously subscribed to by a user of language. If a police officer, as we will see at the end of chapter five, never provides medical assistance for a black man in the back of his car, because the script the officer is using dictates that the man is a criminal (especially because of the color of the man's skin) and that criminals will do anything to avoid going to jail, the police officer is no less responsible for that man's death. Cultural scripts and illocutionary deafening provide a possible explanation for how situations like this one come to pass, however they do not excuse the behavior or protect the addressee from moral culpability.

## Chapter One

### *Austinian Speech Act Theory and Rae Langton: Conceptualizing Silence and Speech as Action*

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#### Introduction

As I stated in the introduction, my goal is to develop a possible account for the mechanics of a particular phenomenon: when people who are (or perceived to be) from oppressed groups are unable to perform ordinary, yet important things with their words. In particular, I stated that my interest is in those situations where the interlocutor(s) have relatively more power or privilege. In this chapter, I will discuss Rae Langton's analysis of one such case that appears in her work, "Speech Acts and Unspeakable Acts" (1993; 2009). In this article, Langton proposes that certain kinds of pornography may both subordinate women by depriving women of certain rights, ranking them as inferior and legitimizing discrimination against them<sup>1</sup>; and silence them by undermining their ability to perform refusals of sex with their words. To do this, she uses Austinian speech act theory to claim that pornography (presumably in all of its forms) should count both as speech and as action. In what follows, I will outline her account of speech act theory qua Austin, before outlining why this may give us some justification to (at the very least) consider that pornography may merit some regulation.

#### Section One: Austinian Speech Act Theory

##### *Section 1.1 Aims, Objectives and Context*

In order to understand feminist antipornography arguments, Langton suggests that we think of pornography as more than just a form of speech. Specifically, she suggests that analyzing the speech acts of pornography may give us a way to understand how pornography can literally silence women and constitute their subordination. The foundation of Langton's proposals rest on J.L. Austin's own brand of speech act theory.<sup>2</sup> In Austin's 1962 work, he describes three main speech act categories which are thought to describe the various ways in which an utterance can constitute an action. If we take Austin seriously, claims Langton, if a person is silenced on any of these three levels, they have--in some sense--failed to act in the way they intended. Furthermore, if this failure is a result, or part of some set of unjust social relations, then we may come to understand why these instances of silencing should be cause for concern.

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<sup>1</sup> Langton, R. (1993; 2009). Speech Acts and Unspeakable Acts. In: *Sexual Solipsism*. 2 ed. Oxford: Oxford University Press. 25-63.

<sup>2</sup> Austin, J.L. (1962) How to Do Things with Words: The William James Lecture Delivered at Harvard University. Cambridge: Cambridge University Press.

It is important to note a few things, before moving on. Langton's work on silencing and pornography, and the related discourse, is largely heteronormative. It also does not make room for what one might call "sex positive pornography" (though Langton will claim that this kind of pornography should be classed as "erotica"). On top of this, there is not much mention of intersectional denies and how these elements might complicate and/or exacerbate the injustice. This is important, as we will see in later chapters, because when we are talking about identity-based phenomena, how real and perceived notions of identity, shape hearers' expectations. Langton herself points to the fact that it is the false expectations of men are what undermines the speaker's ability to deploy the conventional, discursive tools, in order to do what they would like, with their words.

### *Section 1.2 Pragmatics: Doing Things with Words*

Langton starts by presenting the framework for how pornography may contribute to the silencing and subordination of women. Silence, on Langton's view, seems to not only result from women's subordination, but also helps to bring it about and to sustain it.<sup>3</sup> It is this description of the role of silence in the subordination of women that fuels the analysis of pornography as a speech act and the use of speech act theory to describe its contribution to sexual violence against women. Speech act theory distinguishes between three main types of speech acts: locutionary speech acts, perlocutionary speech acts, and illocutionary speech acts. To perform a locutionary act is to merely utter a sentence with a particular meaning.<sup>4</sup> A mother asking a daughter to close the front door will utter the sentence, "Please shut the door," to her daughter. The locutionary act here is the utterance of a sentence with the word "door" indicating the front door of their house, and "shut" to indicate the act of closing something (i.e.: the opposite of "open" and the act of bringing this about).<sup>5</sup> To perform a perlocutionary act, however, is to bring about some sort of effect.<sup>6</sup> The mother in our example may have performed a number of perlocutionary acts (e.g.: annoying her daughter or waking up a napping sibling).<sup>7</sup> It is important to understand here that her daughter closing the door is a perlocutionary effect of the utterance she does shut the door. The final type of speech act is illocutionary acts, which are the actions that are performed in uttering their words.<sup>8</sup> In our example, we would say that the mother has performed a request. It is important to understand that there can be more than one illocutionary act accurately attributed to a single utterance.

Now that we are clear on the types of acts that can be contained in an utterance what sort of things we can do when we speak, we can look at how the three speech acts interact with one another. Austin's primary concern is locating what is distinctive about illocutionary acts.<sup>9</sup> Langton briefly talks about Austin setting apart perlocutionary acts and illocutionary acts by stating that an illocutionary act is marked by what's done "in saying" while "by saying" marks a perlocutionary act. In saying "I love you," for example, I am declaring my love for you. The simple fact that I have uttered those words (in the right context, and meeting all the right felicity conditions), means that I will have performed an illocutionary act of declaration. Perlocutionary acts, however, involve something slightly different. While I have declared my love for you by uttering the words, "I love you", this won't necessarily have the perlocutionary effect of you also declaring your love for me, even if that was my goal. Your reciprocation or lack thereof will be the perlocutionary effects, and my role in bringing this about is

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<sup>3</sup> Langton (2009): 30-31.

<sup>4</sup> Langton (1993; 2009): 27.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Often perlocutionary acts are talked about as *perlocutionary effects* as they are the effects of what's said as well as an action in their own right. See Saul (2006) on this point.

<sup>8</sup> Langton (2009): 27.

<sup>9</sup> Langton (2009): 32.

the perlocutionary act. Likewise, in our mother/daughter example, the mother's hope is that her utterance will have the perlocutionary effect of her daughter getting off the couch and shutting the door. However, it can be the case that the daughter in this example shuts the door without the mother's utterance playing a role in this action. If the daughter can't hear her mom over the music playing in her headphones, but shuts the door anyway, this would mean that the closed door would no longer be a perlocutionary effect of the mother's utterance. One can use a locution to perform an action (the request or the declaration, for example), which will be the illocutionary act,<sup>10</sup> which in turn will have certain perlocutionary effects as its goal.

Illocutionary acts are of particular interest to both Langton and Austin. In particular, Langton states that illocutionary acts result in utterance, "whose force is something more than the semantic content uttered...and something more than the effects achieved by the effects achieved by the utterance."<sup>11</sup> If all the necessary conditions are met (which conditions are necessary, of course, is highly controversial), uttering the right words, in the right context is enough to perform the illocutionary act one intends. What some of the necessary conditions are, is a highly controversial matter. One of these conditions is of particular concern for Langton: uptake. The failure to secure uptake--to, in other words, get the addressee to recognize what kind of illocutionary act you intend to perform--is of particular interest to Langton. It is the failure to secure uptake in this way that silences women's refusals, and justifies feminist calls for the regulation of pornography. It's the role of pornography in leading to this failure, that allows for Langton to claim that illocutionary disablement is a literal silencing of women's refusals, and by extension, how women's First Amendments rights are violated.<sup>12</sup>

Illocutionary acts, like perlocutionary and locutionary acts, are subject to what Austin calls "felicity conditions"<sup>13</sup> and are those conditions that we have mentioned above. They include things such as: context, speaker authority (for example, being ordained to perform a wedding), uttering the right words ("I pronounce you man and woman"), and (of most interest to our discussion throughout), uptake.<sup>14</sup> Langton's view takes, more generally, a nuanced view of the role of felicity conditions, and the role of uptake, at this point (this is as opposed to the view put forward in a later article, co-written with Jennifer Hornsby (1998)). Specifically, Langton states that:

The intention to perform an illocution of a certain kind is not always a necessary felicity conditions for that illocution. Here the context determines the uptake secured, which in turn determines the illocution performed. Moreover, sometimes one fails to perform...this is because the intention to perform an illocution of a certain kind is not the only felicity condition for that illocution.<sup>15</sup>

The point she seems to be making here, is that what kind of conditions must be met for an illocutionary act to be said to performed is going to be relative to what illocutionary act is intended, what the context is, who is attempting to perform the act, and to whom the utterance is directed (or, even, who happens to be "in the room" when the utterance is performed. The consequence of all this, is that—like actions more generally, illocutionary acts (as well as locutionary and perlocutionary acts) can fail in certain ways. In other words, what we intend to do and what we actually end up doing

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<sup>10</sup> Though it doesn't have to be the *only* illocutionary act for this utterance.

<sup>11</sup> Langton (1993;2009): 32-33.

<sup>12</sup> Langton (1993;2009): 33.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Langton (1993;2009): 34.

(according to some)—they can "misfire" as Langton and Austin put it. It is certain kinds of misfiring in which Langton is interested.<sup>16</sup>

Now that we have a general understanding of speech act theory, we can turn to the subject of pornography. I will present what Langton says about the reception and interpretation of feminist claims regarding the role of pornography in the subordination and silencing of women, as well as the reasons why Langton thinks these interpretations are problematic. The courts have largely interpreted feminist anti-pornography legislation as concerning the content and effects of pornography. Judge Easterbrook, for example, states that pornography depicts and causes subordination.<sup>17</sup> If we look back to Austin's theory of speech acts, however, we can see that this is a claim merely about the locutionary and perlocutionary acts of pornography, rather than the illocutionary acts. This is a problem since the claim being made by these feminists is not merely that the content of the speech and the effects it has contribute to and represent the subordination. The claim they make is a much stronger one than this, according to Langton. The claim being made by MacKinnon is that pornography is the subordination of women. The subordination of women is constituted merely in the utterance of a pornographic speech act. The ordinance proposed by MacKinnon says, "We define pornography as the graphic, sexually explicit subordination of women in picture or words."<sup>18</sup> This is not to say that pornography doesn't also depict the subordination of women and contribute to this subordination, but the fact that it also has these features is largely due to the fact pornography is literally the subordination of women, in a graphic and sexually explicit manner. Pornography on its own is an act of subordination, just like "I love you," on its own is a declaration, and "Please shut the door," is a request. The illocutionary act performed by pornography, on this view, is the subordination of women.<sup>19</sup>

## **Section Two: Langton on Silence and Subordination**

### *Section 2.1 Subordinating Speech Acts and Pornography*

#### *Section 2.1.1 Subordination*

Langton begins her discussion of subordination by posing a question: can speech actually constitute an act of subordination?<sup>20</sup> (This is as opposed to merely bringing subordination about as a consequence of speech, which more in accord with how the courts have traditionally understood injurious speech to be.) To explore and ultimately answer this question, Langton considers the ways in which utterances can, in their mere vocalization (given that the other felicity conditions are met), make something the case. She specifically looks at the practice of enacting laws. She uses an example from the practice of Apartheid in South Africa that continued up to the mid-1990's.<sup>21</sup>

If a legislator in Pretoria utters, "Blacks are not permitted to vote,"<sup>22</sup> in order to enact a law supporting and maintaining formal segregation, she has performed a locutionary act of uttering a sentence with a certain meaning: "blacks" referring to black South Africans, "not permitted" referring to legal or official restriction, and "vote" in reference to a particular action of participating in the democratic system of government and the ability to formally voice an opinion. In uttering this sentence, she (the

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<sup>16</sup> Langton (1993; 2009): 34

<sup>17</sup> Langton (1993; 2009): 27.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Langton (1993; 2009): 34.

<sup>21</sup> Apartheid in South Africa was practiced from 1948-1994, though racial segregation existed in the country long before the implementation of Apartheid by the government.

<sup>22</sup> Langton (1993; 2009): 34-35.



legislator) is performing many perlocutionary acts: black South Africans will be barred from entering polling stations; if a black South African does enter a station and does fill out and submit a ballot, they have committed a crime, and their ballot will not be included in the official counting of votes. But what of the illocutionary act? Langton states that the legislator makes it the case that black people are no longer allowed to vote. It is not just a knock-on effect of the legislator's utterance, but something that the words do *in the physical act of speaking*. In other words, given that the law-maker has met all the necessary felicity conditions (she has the authority to enact laws and that she has the relevant authority *in South Africa*, for example) the physical act of speaking the words "Blacks are not permitted to vote," brings into being a circumstance where voting is illegal if you are black. Langton states plainly that, "Plausibly, it [the utterance] subordinates' blacks."<sup>23</sup>

Langton pauses here to outline three key criteria for subordinating actions. An act is subordination if: it ranks the group as inferior, it legitimizes discrimination against the group in question, and if it deprives people of rights.<sup>24</sup> In the case of Apartheid then, blacks are ranked as inferior compared to their white counterparts, discriminatory behavior against black South Africans is made legitimate, and finally black citizens are deprived of the right to vote or be in certain places (polling stations).<sup>25</sup> Here Langton offers two caveats. There is a difference between the illocutionary act of legitimating x and the perlocutionary act of making a group of people believe that x is legitimate. She also wants to make clear that not all acts of legitimating, ranking or depriving someone of power will be acts of subordinating (we may deprive drunk drivers of their licenses or rank athletes, for example). The key here is that the ranking as inferior is unjust, that the behavior being legitimized is discriminatory and that the powers are being taken away unjustly (and that these powers are important ones). We should note here that Langton doesn't say what counts for a power to be important or the deprivation to be unjust. However, I think her claim is a plausible one. Langton says, "That to subordinate someone is to put them in a position of inferiority or loss of power, or to demean or denigrate them."<sup>26</sup> Finally, these conditions for subordination should be seen as jointly sufficient. All of this, I think, is quite reasonable and uncontroversial, at least in part.

The speech acts such as the one in our apartheid example, belong to a certain class of illocutionary acts that Austin calls "verdictive".<sup>27</sup> These illocutionary acts are sensitive to authority and involve an "authoritative delivery of a finding about some matters of fact or value."<sup>28</sup> With these speech acts, the speaker's authoritative role infuses the utterance with a certain force that wouldn't be there if the speaker occupied another role. If, for example, a referee calls a personal foul while working at a local high school basketball game, by blowing her whistle, and shouting, "Personal foul, blue number 32," they are making a claim about the world, as they view it. Specifically, they are reporting their opinion about a certain set of events. The referee is describing a violation of the rules of contact, by a player on one of the teams (which team's player has committed the foul, is indicated by the calling out the team's jersey color): number 32 on the blue team.<sup>29</sup> Because the referee who has performed the utterance is working the game in question (as opposed to sitting in the stands, waiting to work the

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<sup>23</sup> Langton (1993; 2009): 35.

<sup>24</sup> Ibid.

<sup>25</sup> She also wants to make clear that not all acts of legitimating, ranking or depriving someone of power will be acts of subordinating (we may deprive drunk drivers of their licenses or rank athletes, for example). The key here is that the ranking as inferior is unfair, that the behavior being legitimized is discriminatory and that the powers being taken away are important ones and that the deprivation of these powers is an unjust act. (36)

<sup>26</sup> Langton (1993; 2009): 35.

<sup>27</sup> Ibid.

<sup>28</sup> Langton (1993; 2009): 36.

<sup>29</sup> Langton describes a similar example about a tennis match calling a fault.

game that will be played next), the illocutionary act is a verdictive; it reports, with authority, a matter of fact. If the utterance was performed by a parent of one of the players, however, it would lack this kind of formal authority, and would not make a difference to the course of play, or the score. Both speech acts have the same content (the same locutionary act), however the parent's utterance fails to be a "finding" in the sense that Austin and Langton describe.<sup>30</sup> If, however, the referee is not working the relevant basketball game, her illocutions would fail to be exercitive because she would not have authority over the relevant domain. The speaker (in both cases) must have authority over the relevant domain, though this authority doesn't need to be recognized officially.<sup>31</sup> Langton adds to this that, "Subordinating speech acts are authoritative speech acts, so if we are to ever count some class of speech acts as subordinating speech, the speakers in question must have authority [over the relevant domain]."<sup>32</sup>

### *Section 2.1.2 Pornography*

The question for us, then, is whether or not pornographers have the authority needed to perform either verdictive or exercitive speech acts. This question, says Langton, is at the heart of the controversy. If pornographers have the relevant authority over the sexual domain, then we can see how their speech acts constitute subordination (in addition to depicting and causing it). MacKinnon thinks that the voice of pornography is one of "The Ruling Power."<sup>33</sup> Langton doesn't seem to want to take such a definitive stance, however she does seem to want to say that the speech acts of pornography have authority over at least some people<sup>34</sup> and that pornographers are not merely, "a powerless minority or fringe group that is vulnerable to moralistic persecution."<sup>35</sup> Langton thinks this question should be settled through empirical work, and not from the armchair of philosophy. If the answer is that pornographers do have the relevant authority, then the sufficient felicity condition for whether or not pornography is a subordinating speech act will be satisfied. Even without this empirical work, however, it seems that pornography may have the relevant authority for enough people and though it may fall short of what she calls, "the illocutionary paradigm"<sup>36</sup> it may subordinate nonetheless. We may have enough of the necessary felicity conditions to say that pornography subordinates. It may be that we can say pornography is authoritative in the domain of speech that's about sex for an audience that count (the ones who seem to learn that violence and coercion are legitimate moves in a normal sexual encounter) and that this is enough for us to say that it subordinates merely through its utterances.<sup>37</sup>

## *Section 2.2 Silencing Speech Acts and Pornography*

### *Section 2.2.1 Silence*

We will now turn to the pressing question of silence. Just as we can divide the actions of speech into three categories, we can also divide silencing speech and silenced speech into three categories.

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<sup>30</sup> Langton (1993; 2009): 36.

<sup>31</sup> Langton (1993; 2009): 37.

<sup>32</sup> Ibid.

<sup>33</sup> Langton (1993; 2009): 44; see also: "The authors of pornographic speech are not mere bystanders to the game; they are speakers whose verdict counts. Pornography tells its hearers what women are worth: it ranks women as things, as objects, as prey. Pornography tells its hearers which moves are appropriate because women want to be raped, it legitimates violence."

<sup>34</sup> "In this domain, and for these hearers, it may be that pornography has all the authority of a monopoly." (Langton (1993; 2009): 45-46.

<sup>35</sup> Langton (1993; 2009): 44.

<sup>36</sup> It seems that she is referring to the aforementioned idea that a speech act that subordinates needs to have authority and must rank, legitimate discrimination and deprive a group of powers or rights.

<sup>37</sup> Langton (1993; 2009): 44-45.

Langton points out that if we agree and take seriously the claim that speech is one way in which we perform actions, then in at least some cases, silenced speech acts are also failures of action, more broadly.<sup>38</sup> Whether or not one is able to perform a certain action will depend on a number of factors; some of these factors are simply down to luck or the laws of nature: I was not born with a prehensile tail and therefore am unable to swing from tree branches.<sup>39</sup> Likewise, the fact that I'm not legally certified to performing wedding ceremonies prohibits any utterance of the sentence, "I now pronounce you husband and wife," from being the illocutionary act of marrying. These inability seem to have little to do with my political or social power. I may feel powerless while watching a monkey swinging around in the Zoo, or while watching friends fret over finding someone to officiate their wedding, but this feeling of powerlessness seems to have little to do with injustice. Langton, however, thinks that instances where the inability to perform the speech act one desires may be a mark of powerlessness in the relevant sense. If a 14 year-old wanted to marry her pet goldfish, for (an admittedly absurd-sounding) example, they can have an ordained minister utter the words required to marry the two, the teenager can herself say, "I do," and perhaps even have to fish blink in the affirmative (setting aside for a moment whether or not a goldfish can be said to give consent), fill out the paperwork and the like, however because children cannot marry goldfish (in the United State at least), their utterances will fail to be the act they intended: marrying one another. There is something about the asymmetry of power that makes it the case that there is nothing the couple could do to meet the conditions required for their speech acts to succeed.<sup>40</sup>

Speech acts can be silenced in three ways. The first is what we may typically think of when we think of silence. If no words are uttered, then we have a case of locutionary disablement. This is the most obvious form of silence and can be brought about in a handful of ways. A group may decide not to protest, for example, because they believe that to do so would be futile.<sup>41</sup> The second type of silencing is what Langton calls perlocutionary frustration. Here you are able to utter the words you wish to utter; however, these words fail to have the effect you would like them to have. The group may decide to protest and in doing so, intend to shock their peers into action. Their protest will have been perlocutionarily frustrated if they fail in this goal. Langton is quick to note here that perlocutionary frustration doesn't need to have a political dimension (she says it is "a common enough fact of life"), but that: "Such frustration can have a political dimension when the effects achieved depend on the speaker's membership in a particular social class."<sup>42</sup> The third type of silencing is, of course, illocutionary silencing. This is when a person is able to utter the words they desire, but they not only fail to have the intended effect, they also fail to constitute the action intended. In the case of our protesters, they are able to and do protest, but (let's imagine) their peers not only fail to be shocked by what they do, but take the group as performing a scene from a play. Here we will say that the speech act is an unhappy one and that it misfires.

Just as we can carve up silenced speech into three categories, so too can we carve silencing speech into three categories. There are ways in which the speech of one person can keep someone else from uttering the words they want to utter. This can be for many reasons (threat, enactment of laws, expressions of apathy, and so on). In all cases of silencing speech, the perlocutionary effect will be silence of at least one of the types mentioned above. "Silence in the court," would be a case of illocutionary silencing, in which one uses a locutionary act to silence the locutionary act of another.

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<sup>38</sup> Langton (1993; 2009): 47.

<sup>39</sup> Setting aside the fact that one happens to be a powerless minority in context C may be a matter of luck, of course.

<sup>40</sup> Langton (1993; 2009): 47-48.

<sup>41</sup> Langton (1993; 2009): 48.

<sup>42</sup> Ibid.

The resulting silence is a locutionary silence. However, the same utterance could also bring about perlocutionary or illocutionary silencing. The defendant may continue to try to make her case, but only succeed in angering the judge and reinforcing the jury's opinion that she probably did commit the crime of which she is accused. This would perlocutionarily frustrate her utterance in that it would fail to convince the jury of her innocence. Likewise, her protests (despite the judge's demand for silence) may be understood as the ramblings of a madwoman, desperate to avoid prison, which would disable the intended illocution.<sup>43</sup> Perlocutionary acts and illocutionary acts can also silence other speech acts.<sup>44</sup> If the protesting group is successful in the perlocutionary goal of their speech act, they may silence the utterance of the unjust head of state in denouncing the group's actions and decreeing that all public gatherings are prohibited. Here the illocutionary act of protest has brought about the perlocutionary effects of rallying the citizens against the head of state and frustrating the perlocutionary goals of the president's utterances—their protest has stripped her of her authority and so her utterances fail to meet the felicity conditions needed to enforce or enact the prohibition.

### *Section 2.2.2 Pornography*

We will now turn to what Langton wants to say regarding refusal. "There is a question about the role speech may play in disabling speakers, preventing them from satisfying felicity conditions for some illocutions they might want to perform."<sup>45</sup> In the case of refusal, it is possible that a woman intending to refuse sex who utters "No," fails to perform the illocutionary act of refusal because the hearer doesn't recognize that this is what she is attempting to do with her words. Uptake is not secured and therefore her utterance misfires. "Something about her," says Langton, "something about the role she occupies, prevents her from voicing refusal. Refusal—in that context—has become unspeakable to her."<sup>46</sup> Like the fourteen-year-old and the goldfish in our previous example, there is nothing she could do to meet the felicity conditions for refusal. It is precisely because of the role she occupies that she is unable to refuse the sexual advance and, as a result the utterance fails on an illocutionary level as well as a perlocutionary level. It fails to constitute a refusal and fails to halt the sexual advance.<sup>47</sup>

If pornography has the authority that Langton hypothesizes it has, then it has the power to set the conventions which will then fix the felicity conditions of the sexual language game. Authoritative speech can and often does set the boundaries of what can be said by whom. This speech also dictates convention and, as a consequence, felicity conditions. If a consumer of pornography takes the pornographers to be the relevant authority, they will learn that in the language game of sex, a woman uttering what normally would count as a refusal does not actually carry out the illocutionary act of refusal, but rather an act of invitation or acceptance. It is in this way that Langton thinks women are blocked from refusing sex in at least some of the contexts where the hearer is also a consumer of pornography.<sup>48</sup>

It is here that we can see the link between Langton's claims regarding silence and subordination. Because women who are silenced in this way are deprived of the power to perform important illocutionary acts, they can be said to be subordinated in at least one way. The right of women to choose what happens to their bodies is taken away from them. It is, then, easy to see how this marker of subordination will take us to the other two markers (though Langton doesn't go this far). If women no longer have a say in what happens to their bodies, then it seems that their autonomy and physical

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<sup>43</sup> Langton (1993; 2009): 50.

<sup>44</sup> Langton (1993; 2009): 50-51.

<sup>45</sup> Langton (1993; 2009): 32.

<sup>46</sup> Langton (1993; 2009): 54.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

safety is ranked as a lower priority than the sexual satisfaction of men, which seems to indicate that women are ranked as inferior to men. Additionally, if a woman is not able to perform the act of refusal, that seems to legitimate certain violent and extremely discriminatory behavior, namely rape and sexual assault.<sup>49</sup>

## Conclusion

The goal of this chapter was to present Langton's account of unjust silencing qua speech acts in order to make a start at analyzing the ways in which pragmatic dysfunction in other realms may contribute to, or enhance oppression. Langton's focus was on the ways in which certain kinds of pornography could be understood as constituting the oppression of women. Specifically, she presented us with an instance in which women may be undermined in their ability to employ usual discursive tools to perform an illocutionary act of refusal. In the service of this goal, we looked at Langton's use of Austinian speech act theory. This included an explanation of three major categories of speech acts: locutionary acts, illocutionary acts and perlocutionary acts. We then went on to look more carefully at illocutionary acts, and the ways in which attempts to perform certain illocutionary acts may go awry. Specifically, we discussed what kinds of conditions are necessary for (at the very least), illocutionary acts of refusal. This included a discussion of how identity conditions may undermine one's ability to perform certain illocutionary acts. We moved on from here to discuss how some illocutionary acts may put certain conditions into place, and therefore exclude some groups from performing other illocutionary acts. In this discussion, Langton's goal was to demonstrate one way in which the illocutionary disablement of women is more than just an effect of pornographic utterances, but how they might constitute their (women's) subordination. It is because pornographic utterances have verdictive and exercitive force that it can be said to constitute the subordination of women. Langton finishes her article suggesting that pornographic utterances may authoritatively rank women as inferior (as sex objects), legitimates discriminatory behavior towards them, and may unjustly deprive women of the power to refuse sex. If pornography *actually does* these things will depend on what kind of authority it turns out to have.

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<sup>49</sup> Ibid.

## Chapter Two

### Something, Something Free Speech

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#### Introduction

*"I believe in only two things: The First Amendment and Boobs."*

*-Richard "Clay" Travis, former Fox News Sports Reporter to CNN host, Brooke Baldwin*

In chapter one I outlined Langton's use of Austinian speech act theory to both try to explain how pornographic speech (which is spoken and consumed largely by men, according to MacKinnon<sup>1</sup>), limits and silences the speech of women. Langton proposes that this may provide some justification for the regulation of pornography<sup>2</sup>—if we value the right to free speech, we may want to attend to the silencing of women's refusals of sex. Langton suggests that this may especially be the case when one group's exercise of their right to free speech limits or prevents others from doing so as well, where the silenced group has relatively less power.<sup>3</sup> This is the way in which her argument and proposals are meant to be grounded on liberal values. In what follows, I will present two objections made by Daniel Jacobson (1995; 2001), which criticizes the role of speech act theory and illocutionary silencing in First American jurisprudence.<sup>4</sup> Specifically, he criticises what he takes to be Langton's "civil libertarian foundation" and puts into question the usefulness of speech act theory to clarify Millian civil libertarianism. Following this, I will present Langton's response which she makes in part with Jennifer Hornsby in their 1998 paper, "Freedom of Illocution? Response to Daniel Jacobson". In Jacobson's first paper (1995). He grants Langton the use of speech act theory and her diagnosis of the issue at hand (the failure of women's refusal of sex). He states that, "Free speech, roughly glossed by Mill, is the freedom of locution."<sup>5</sup> In other words, at this point Jacobson thinks that the freedom of speech is the freedom to utter any sentence with any particular meaning. He rejects the idea that one can have a right to utter any illocutionary act of any sort, and that Langton's claims are confused and misguided.<sup>6</sup>

In Jacobson's later paper, however, he changes his tone regarding what exactly the freedom to speak means by rejecting speech act theory as a useful tool to illuminate or clarify issues of speech.<sup>7</sup> He makes it clear that on the liberal conception, it is the intent of a free speech law to protect the expression of any idea or opinion and to guard against the censorship of speech that is based its

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<sup>1</sup> Langton (1993; 2009): 27.

<sup>2</sup> Ibid.

<sup>3</sup> Langton (1993; 2009): 29.

<sup>4</sup> Jacobson, D. (1995) Freedom of Speech Acts: A Response to Langton. *Philosophy and Public Affairs*. 24(1) 64-79.

<sup>5</sup> Jacobson. (1995): 64.

<sup>6</sup> Jacobson (1995): 65.

<sup>7</sup> Jacobson, D. (2001) Speech and Action: Replies to Hornsby and Langton. *Legal Theory*. 7(2) 179-201.

content.<sup>8</sup> Additionally, Jacobson thinks that Langton's examples of voting or marrying, for example, are not instances where speech rights are violated. Just because you can exercise a right via speech does not mean that right has become a speech right.<sup>9</sup> That an eight-year-old child cannot marry another eight-year-old child, does not mean that when the children utter the requisite words, and are not then married, that the children's First Amendment, free speech rights are violated.<sup>10</sup>

I will start our analysis by presenting the full extent of Jacobson's objections to Langton's use of free speech values to argue for the restriction of speech. In doing so, I will first look at his claim that speech act theory is little use in fleshing out free speech issues.<sup>11</sup> I will then look at what he claims the liberal conception of freedom of speech is: to maintain content neutrality.<sup>12</sup> I will attempt to show, through an analysis of Jacobson's specific claims about what is allowable and not allowable on the liberal conception of speech that in fact he agrees with Langton on one crucial point: the type of action an utterance is can make it a candidate for regulation. Crucially, where Langton and Jacobson disagree, is on what kinds of actions should be protected speech. Though I doubt there is anything we will be able to say to endear Jacobson to the usefulness of speech act theory in these matters, I do think that this type of analysis will attempt to show how speech act theory may illuminate matters, in terms of deciding what types of speech acts should be protected and which should be restricted.

In the final section of this paper I will point to First Amendment jurisprudence to help illustrate what kinds of speech acts should be protected and which should not. I will start with the Miller Test, a test for obscenity that was developed in the 1973 U.S. Supreme Court Case, "Miller v. The State of California," in order to regulate films and other media that was found to be without any artistic or socially redeeming value. The Miller Test is the typical sort of test applied to pornography, in order to argue for its regulation. Though this test seems like the most logical way to restrict pornography, as it explicitly names sexual acts as the kind of content the restriction has in mind, I believe that this test rests on old notions of harm and decency that make it philosophically untenable within the framework in which we are working. Additionally, though The Miller Test will not help us to figure out which speech acts should be protected under the First Amendment, it will provide proof that there is room for content-based restriction under it.

Instead of looking to such legislation as "Miller v. The State of California," for help in distinguishing what types of speech acts are protected; I believe that we should look to legislation regarding commercial speech. This legislation recognizes that commercial speech targets audiences that are more likely to be engaged in commerce of some type and are therefore seen as potential customers. This type of speech is not given the same sort of protection as non-commercial speech and is, therefore, subject to content-based restriction more often. I will argue here that the restriction of commercial speech provides us with a way to argue for the restriction of pornography, given that the listeners of pornographic utterances are more like consumers (or potential consumers—on which I will clarify later), than the reading audience of a newspaper's opinion section.<sup>13</sup>

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<sup>8</sup> Jacobson (2001): 179.

<sup>9</sup> Ibid.

<sup>10</sup> Jacobson (2001): 180.

<sup>11</sup> Ibid.

<sup>12</sup> Jacobson (1995): 185.

<sup>13</sup> It should be noted that Jacobson raises other doubts about Langton's theory. These doubts have to do with the mechanics of her example and whether or not the instance she describes is actually an instance of illocutionary disablement. I will table these worries for now and take them on in the next chapter.

Though this line of argumentation seems promising, it is one that ultimately fails. Though I do believe that looking at pornography less like political speech and more like commercial speech, the analysis fails precise because what the makers and producers are trying to sell is, ultimately, pornography. Once it is being consumed, the commercial transaction has been completed. I do think that it may be fruitful to look at the way in which other speech is regulated (for example, there are limits on what the makers of vitamins and health products can claim not only in their ads, but what they put on their products). In the conclusion of this chapter, I will discuss why Hornsby and Langton, as well as Langton herself, gives us enough justification for being concerned about the kind of silencing she describes. My ultimate goal is to use her framework to explain other instances of illocutionary disablement, where the addressee has relatively more power than the speaker. Specifically, I will analyze instances where racist attitudes or beliefs (explicit and/or implicit) undermine the listener's ability to understand the speaker. I am focused on how the addressee's biases keep them from being a competent speaking partner, and how this breakdown further contributes to the oppression of the speaker.<sup>14</sup> This means that though it is helpful to explore how to address the issue of subordinating speech acts and what should be done to limit them without infringing on such basic human rights, it is not essential to my broader goal.

### **Section One: Jacobson's Liberal Conception of Free Speech**

Jacobson formulates his worries and objections to Langton's theory in two separate papers. There is an important shift in his opinion, between the first paper and the second that I think is worth noting. In Jacobson's first paper, "Freedom of Speech Acts? A Response to Langton," (1995) he states that at most, the liberal conception of free speech is the freedom of locution.<sup>15</sup> However, in his later paper ("Speech and Action," (2001)), he decides that speech act theory has no place in the discussion of free speech, since Austin and Mill are working with different, and incompatible notions of two key terms: "speech" and "action"—and as a result, that Austin's more general definitions of these terms will do us little good in trying to flesh out the details of Mill's theory, which employs the terms in a narrower sense.<sup>16</sup>

I will start my analysis of Jacobson by going through his initial objections, as put forward in his earlier paper. I will then briefly go through Langton's response before moving on to what Jacobson asserts in the later paper. Following this explication of Jacobson, I will transition to the next section where I will address Jacobson's rejection of Langton's use of speech act theory and attempt to defend the idea that the First Amendment allows for the protection of some illocutionary acts, at the cost of regulating the illocutionary acts of others.

Jacobson's doubts start with Langton's proposal that there is a free speech right to refuse sex.<sup>17</sup> Though he doubts her account of illocutionary disablement and thinks women are not in fact silenced, he sets this aside at this point.<sup>18</sup> His initial criticism attempts to undermine the idea that the First Amendment gives anyone a right to perform a refusal of sex. Because Jacobson is looking to undermine the liberal motivations of Langton's argument, he looks to John Stuart Mill for proof that the liberal conception of free speech does not include illocutionary acts, and therefore will not allow

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<sup>14</sup> That communication breakdowns have and do contribute to making oppressive social situations worse is seen in Langton's work (1998;2009), as well as in Kukla (2014).

<sup>15</sup> Jacobson (1995):67.

<sup>16</sup> Jacobson (2001): 180-181.

<sup>17</sup> Jacobson (1995): 66.

<sup>18</sup> As it has been said already, I will also set any worries about her account of illocutionary disablement aside until the next chapter.



for the protection of the ability to perform an illocutionary act of sexual refusal. Jacobson quotes Mill (2011), who says:

An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may incur just punishment when delivered...to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard.<sup>19</sup>

The liberal conception, states Jacobson, of free speech is to protect against content-based restriction on the part of the government.<sup>20</sup> We have the right to express any opinion or idea, but as Mill points out, we don't have the right to do so in any context. There is a point at which the expression of an opinion may be restricted: when that expression becomes *a certain type of act*. Here is where Jacobson concedes—however temporarily—that speech act theory may be helpful: it can help us delineate between instances of expression that should be protected (when the opinion is published in the paper), and when it should not (when that opinion becomes an instigation to riot). The illocutionary act of instigation to act violently is one particular example where speech may be restricted, which is meant to serve as one initial point against interpreting the freedom of speech as the freedom of illocution.<sup>21</sup>

As it has been said, the point of free speech on Mill and Jacobson's view is to defend the expression of opinions from content-based restriction. It is meant to allow for a person to tell her neighbour, for example, about how much she would like to overthrow the government.<sup>22</sup> Just because a government official or anyone else, for that matter, finds the content of the woman's utterance objectionable or immoral does not mean that my freedom to communicate the content should be restricted. This is at the crux of a liberal conception of free speech.<sup>23</sup> If Langton is to make a successful argument on these grounds then, the conception of free speech at work in her paper must be consistent with it.<sup>24</sup>

Though we might think that pointing to a specific instance where liberals would want to restrict speech precisely because of the type of illocution an act has become, to be enough to show that Langton is wrong in claiming that a person has a First Amendment right to perform illocutions, Jacobson decides to take his argument one step further. He wants to show that claiming a First Amendment right to perform illocutionary speech acts would be an untenable position. To do this he begins by comparing different cases of illocutionary disablement. In the case that Langton puts forward there is an injustice done. Jacobson states that any "right-thinking person"<sup>25</sup> would wish for the woman to not have her speech act silenced. This, however, is not always the case. The fact that small children can neither vote nor get married is, presumably a good thing. However, on Langton's view these are both instances of illocutionary disablement. Jacobson thinks that because these are

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<sup>19</sup> Mill, J.S. *ON Liberty*. Cambridge: Cambridge University Press, 2011. 101. (ebooks.cambridge.org)

<sup>20</sup> Jacobson (1995): 70.

<sup>21</sup> Ibid.

<sup>22</sup> Jacobson (1995): 73,

<sup>23</sup> Jacobson moves from discussing civil libertarianism to liberalism without fleshing out if he thinks there is a difference between the two ideals. He attributes civil libertarianism to Mill in his 1995 paper and then drops the phrase for the term "liberal". I will use the term "liberal" consistently to refer to both in this chapter.

<sup>24</sup> We should note here that, in her original article, Langton never explicitly claims to have civil libertarian or liberal premises as the foundation of her argument. She does state that the values that motivate her argument are the same values "enshrined in the First Amendment," however. It seems that the claim to be motivated by the same values that are found in the First Amendment of the United States' Constitution, is on Jacobson's interpretation, to be motivated by liberal values. We will discuss whether or not this is a fair attribution in the last section of this chapter, however it is worth keeping in mind for now.

<sup>25</sup> Jacobson (1995): 76.

instances of illocutionary disablement on Langton's view, were we committed to the freedom of illocutionary acts, we would be committed to defending not only a woman's right to refuse sex, but a child's right to get married as well. This is obviously an absurd result.<sup>26</sup>

When this evidence is put together with the point that illocutionary acts of incitement to act violently are not protected by the First Amendment, we are meant to reject the idea that free speech laws are meant to protect the right to perform illocutionary acts. As a result of this proof, states Jacobson, there can be no room for the freedom of a woman to perform an illocutionary act of refusal. Though the right to refuse sex (as well as the right to have that refusal respected) are both important rights, they are not free speech rights. Jacobson wants to make it clear that he does not intend to equate the right of children to marry, with the right of women to refuse sex—his point is that:

It is one thing to say women should be able to refuse sex, and quite another to think twelve-year-olds should be allowed to vote and marry...what is so terrible about a woman's being unable to refuse sex is the disablement of her autonomy, the resulting violation of her body, and assault on her well-being.<sup>27</sup>

We should take the right of women to refuse sex, according to Jacobson and that right is quite unlike the ability of children to marry. Likewise—though he doesn't say this explicitly—this is why we have laws prohibiting rape and sexual assault, which are meant to support rights to welfare and make decisions over one's body that are considered to be protected under what are deemed *unenumerated* rights in the Ninth Amendment.<sup>28</sup> The capacity to perform an illocutionary act of the refusal of sex *is* an important capacity, however, this is only because of its role in having other rights respected like the right to make decisions about one's own body. In contrast, while there may be a similar right to marry, that right does not and should not extend to children, so, "there is no tension in defending a woman's right to refuse and denying a child the right to marry, because freedom of expression is not the freedom of illocutionary acts."<sup>29</sup>

At the end of Jacobson's 1995 paper, he states that though the right of a person to refuse sex is an important one, this is not a speech right—even though it is an act performed through speech. The role of illocutionary acts in free speech issues, then, is to help us determine when speech becomes an action that we should restrict. This, says Jacobson, is because the idea of free speech law is merely to guard against the restriction of speech, on the grounds of its content.<sup>30</sup>

In Jacobson's later paper, "Speech and Action" (2001), he shifts from conceding that speech act theory, and its idea that speech is just a subset of the wider category of "action," might be helpful in delineating when to restrict speech, to rejecting its use in illuminating free speech issues. His rejection is based on the foundational idea that speech act theory merely makes the discussion of free speech less clear. Jacobson thinks that because Austin's conception of "speech," and "action," are broad and Mill's conception of these terms are narrow, that the former won't be able to clarify the latter. Austin, as it has been discussed in the previous chapter, believes that speech is merely a subset of the wider category of action.<sup>31</sup> While Mill draws a distinction between speech (i.e.: the expression of an

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<sup>26</sup> Jacobson (1995):77

<sup>27</sup> Jacobson (1995) 76.

<sup>28</sup> U.S. Constitution. Art./Amend. IX

<sup>29</sup> Jacobson (1995): 76.

<sup>30</sup> We may want to later ask about whether or not free speech law is meant to protect private citizens from having their speech restricted in this way by other private citizens or entities, however this is not something that either Jacobson or Langton address in their writing.

<sup>31</sup> Austin (1962): 117.

opinion) and action (i.e.: inciting a group to riot), Austin rejects this distinction and argues that they are two actions separated merely by degree and type, but not kind.<sup>32</sup> In other words, where Mill would say that expression of an opinion is speech, Austin would say it is a speech act—a saying and a doing. The performance of uttering a sentence with certain content, which constitutes an action of a certain kind: an illocutionary act of expression. Mill makes no such distinction.<sup>33</sup> Furthermore, Jacobson states that the kind of thing liberal theorists have in mind when they talk about free speech is not the defence of a type of action, performed by uttering words.<sup>34</sup> To a liberal, this is an absurd way to talk about free speech. In formulating free speech laws, states Jacobson, we should instead be concerned with guarding against the restriction of speech merely on the basis of the content of that speech. There needs to be another reason why we should be restricting the speech, no matter how objectionable, immoral or abhorrent the content.<sup>35</sup>

## Section Two: Langton's Response to Jacobson's Objections

Broadly, Jacobson's objections boil down to this: if Langton is going to convince liberals that they should be open to regulation of speech, on free speech grounds, she will need to be able to prove that her argument rests on liberal premises.<sup>36</sup> Additionally, in order to prove this, the conception of free speech that Langton will need to be working with will need to be a liberal one.<sup>37</sup> The problem, of course, is that Jacobson thinks that the conception of free speech found in Langton's argument is counter to the liberal view.<sup>38</sup>

Langton's aim is to show liberals that they should be amenable to the regulation of some speech, because of what it does to the ability of others to perform certain important actions with their words.<sup>39</sup> Though I believe that an argument can be made for the claim that Jacobson's conception of liberalism is a limited one, I think that there is a better way to overcome his objections that won't involve arguing for a particular definition of liberalism. Since Langton's main aim is to explain and defend Catherine MacKinnon, who is ultimately concerned with successfully making a case for the regulation of pornography in the real world, I think that it will be enough to show that Langton's argument succeeds on First Amendment grounds.<sup>40</sup> Additionally, I think this will be good enough for my purposes since my main aim in defending Langton against Jacobson's objections is to show that it is philosophically and legally reasonable to restrict some speech because of the act it is and the because of the way in which it limits the speech acts of oppressed groups<sup>41</sup> (where the term "speech acts" is to be understood to include perlocutionary and locutionary acts, as well as illocutionary ones). In order to do this, I will need to determine just what kind of speech acts are and are not protected under the First Amendment.<sup>42</sup> What Langton proposes is, I think, compatible with First Amendment values.

There are two points to be made in response to Jacobson's first major objection. First, Langton never suggests that the freedom of speech includes or should include the right to do any old thing with your

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<sup>32</sup> Jacobson (2001): 199.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Jacobson (1995): 65.

<sup>37</sup> Ibid.

<sup>38</sup> Setting aside the fact that she puts free speech in terms of speech act theory.

<sup>39</sup> Langton (1993; 2009): 60.

<sup>40</sup> Langton (1993; 2009): 23-24.

<sup>41</sup> Langton (1993; 2009): 35.

<sup>42</sup> There are two reasons for taking an American, First Amendment approach: 1) that is the context in which the literature is rooted, and 2) this is purportedly the most absolutist context, when it comes to speech rights so if we can show that regulation is feasible here, it should be significantly less difficult to do so in other contexts.

words, or even the right to do any illocution one would wish to do with your words. Langton's proposal was simply to suggest that though the freedom to express any ideas or opinions is an important one, sometimes the exercise of this right interferes with the ability of others to rather important things with their words—namely to freely refuse a sexual advance.<sup>43</sup> As we have already noted, Jacobson balks at this defence. However, Langton and Hornsby do expand on this idea in their 1998 paper, "Free Speech and Illocution,"

Someone interested in free speech will have a conception of illocutionary acts that extends beyond those acts whose conditions are bound up with specific institutions; it will extend to all of those acts which Austin came to say are illocutionary—acts which as we put it, reveal language as communicative. Certainly, this includes the institutional acts upon which Jacobson focuses and about which special questions arise; but it includes a great deal more besides—refusing is just one example of what it includes.<sup>44</sup>

Simply put, Langton and Hornsby are arguing that the freedom of speech does include more than merely the right to make meaningful sounds—and that what their arguments require is an admission that at least one of these things is the right to enact a refusal.<sup>45</sup> Free speech includes the right to say and to be taken as saying X.<sup>46</sup> This, they state, is a far more conservative claim than the one made by Mill—since they only aim to protect the ability to be taken as performing a refusal—they say:

There is nothing here which Mill would disagree with. Mill defended a free market of ideas. He argued that a general license to speak is conducive toward the spread of truth. But the spread of truth does not even come into the picture if we confine ourselves to the locutionary acts of speakers, to their makings of meaningful sounds.<sup>47</sup>

There cannot be, on Mill's view, freedom of speech without the freedom to perform at least some illocutions since it seems that if our only right is to make meaningful sounds, it will be impossible for any idea to rise to the top if others cannot or do not come to understand what we are attempting to do with our words (in order to figure out whether or not they agree or disagree with us).<sup>48</sup> The right, for example, to express an opinion seems like an empty right if no one recognizes what we are trying to do. I seem unlikely to engage in a critical discussion if I, for example, think you are merely reciting lines from a film.<sup>49</sup>

Before moving on to the next section, where I will discuss whether or not the right to refuse sex is a speech right, I would like to note an interesting point that Langton and Hornsby bring up: they disagree with Jacobson that the incitement to riot is an illocutionary act. They state that inciting a mob to violence is clearly an extra-linguistic consequence of the utterance, and therefore, a perlocutionary act rather than an illocutionary one. This is worth bringing up now, as it is a direct point against Jacobson.

The rejection of a verbal, "incitement to act violently" is a puzzling move, given that Langton proposes that one illocutionary act of pornography is the subordination of women, where this is meant to be understood as not merely depicting or promoting the subordination of women, but *constituting*

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<sup>43</sup> Hornsby and Langton (1998): 22-23.

<sup>44</sup> Hornsby and Langton (1998): 33-34.

<sup>45</sup> Ibid.

<sup>46</sup> Hornsby and Langton (1998): 34.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

it.<sup>50</sup> In chapter three, I will claim that if Langton is committed to rejecting the idea that incitement can be an illocutionary act, she must also be committed to rejecting subordination as an illocutionary act as well. Though both Langton and Hornsby are right to say that the resulting mob in the corn-dealer case is certainly a perlocutionary effect of the original utterance, the particular verbal act of incitement can, and I think should, be thought of as an illocutionary act as well.<sup>51</sup>

### Section Three: Pornography and Commercial Speech

This section will have two main parts: (1) an argument that pornographic speech acts should be treated less like political speech, and more like commercial speech; and (2) a suggestion regarding what kinds of speech acts, other than the mere expression of opinion are protected by the constitution, by employing both the First Amendment and the Ninth Amendment. I will argue that there are particular rights, separate from expression of political content, that are mainly exercised through speech and as a result can only really find protection in the constitution, under the First Amendment. Though the liberal ideal of free speech is to protect the expression of ideas to ensure the free-flow of political debate, I think I can prove that what Langton suggests is workable within the United States Constitution—which provides us proof that such things are therefore workable within the most radical, libertarian context<sup>52</sup> on the globe.

Before I dive into my argument, I will need to make a preliminary note about the scope of my claim. While I do intent to show that pornography is not political speech, I am emphatically not suggesting that it *actually is* commercial speech. I merely aim to show that speech such as pornography (and perhaps some forms of entertainment, as I hope to show in later chapters) has much less to do with free political debate, than with the consumption of products and services, and engagement in transactions.

#### 3.1 Commercial Speech Regulation: An Overview

I will begin by setting out the basics of commercial speech regulation in the United States. The development of this legislation, as is the case with much of constitutional law, pertinent to defining the boundaries of what the courts do and do not consider commercial speech, as well as what kinds of things the government can do in order to regulate it—even given this, however, I will endeavour to make this section brief.

That commercial speech should not receive full, First Amendment protection was introduced in *Valentine, Police Commissioner of the City of New York v. Chrestensen* (1942). The exact details of the case are unimportant. What is, however, of note is that this is the point at which it is decided that commercial speech's connection with the generation of profit, despite the role of political content of the speech, puts it into a different class of speech from that which is meant to be protected by the First Amendment.<sup>53</sup> Though it is the fact that this case establishes the differential status of commercial speech, which puts it into a distinct category from speech such as Mill had in mind when discussing his Harm Principle. It should be noted that this first case, “held that commercial speech was not entitled to First Amendment protection.”<sup>54</sup> Thirty-two years later, however, the decision was made to reverse this ruling. The 1976 case involved a citizens group that argued it was, “‘unprofessional’ for a

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<sup>50</sup> Hornsby and Langton (1998): 35.

<sup>51</sup> It should be noted, however, that with regards to free speech issues, nothing I will say needs to rest on whether or not the incitement to act in a particular way is an illocutionary act.

<sup>52</sup> Regarding freedom of speech, at least.

<sup>53</sup> *Valentine, Police Commissioner of the City of New York v. Chrestensen*. (1942). 316 U.S. 52.

<sup>54</sup> Petty, Ross D. (1993) “Advertising and the First Amendment: A Practical Test for Distinguishing Commercial Speech from Fully Protected Speech.” *Journal of Public Policy and Marketing*, 12.2: 170.

pharmacist to advertise the price of its prescription drugs.”<sup>55</sup> The court decided that this speech merely proposes a commercial transaction, which is entitled to at least some protection from the first Amendment. Ross Petty, author of an article briefly outlining the history of commercial speech in the Supreme Court, notes that the Court based this on the fact that society at large might have a strong interest in what the Justices called, “a free flow of commercial information.”<sup>56</sup> The clearest defence of this ruling can be found in yet another court case, which was decided two years later:

To require a parity of constitutional protection for commercial and non-commercial speech alike could invite dilution, simply by a levelling process, of the force of the Amendment’s guarantee with respect to the latter kind of speech. Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate status in the scale of the First Amendment values, while allowing modes of regulation that might be impermissible in the realm of non-commercial expression.<sup>57</sup>

Here we can clearly see that though there is a role for the freedom of speech within the commercial realm, that there are compelling reasons for not wanting to grant it the same level of protection that we afford political speech. There are two competing ideas at work here. The first is that allowing some level of freedom in commercial speech allows consumers or potential consumers to access information about goods and services. This seems important, at least to some extent. If I don’t know who sells tires in my city, how much they cost, or anything about the reputations of those sellers, how am I to make an informed decision? However, it is because of the, “profit-driven durability”, and more objective nature<sup>58</sup> of the speech which led the Court to propose four main points of restriction for commercial speech. This speech can be restricted if:

- A) The speech is false or misleading.<sup>59</sup>
- B) Made at an unreasonable time, place or in an unreasonable manner.
- C) The speech proposes illegal transactions or transactions concerning services or products that could be banned by the state, even if they currently are not.<sup>60</sup>
- D) The commercial speech is made on electronic media, since electronic media presents certain unique issues.<sup>61</sup>

In order to regulate commercial speech, a four-part test was developed in a 1980 case, *Central Hudson Gas & Electric v. Public Service Commission of New York*. The test more or less conforms to the above caveats. Additionally, like other cases of speech regulation, the restriction must employ the least restrictive means.<sup>62</sup>

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<sup>55</sup> Petty (1993): 170.

<sup>56</sup> Petty (1993): 170. See also: *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council* (1976), 425 U.S. 746.

<sup>57</sup> *Ohralik v. Ohio State Bar Assn.* (1978). 436 U.S. 447. (§456)

<sup>58</sup> Petty states that commercial speech is, “more easily verifiable than other types of speech.” (170)

<sup>59</sup> Petty (1993): 171.

<sup>60</sup> The best way to think of the second clause of this point is to imagine speech advertising a yet, unregulated recreational drug. The commercial speech in this case is open to restriction under this, even if the drug X is perfectly legal (in other words, even if the drug is not currently regulated and there is not express law restricting its use).

<sup>61</sup> There isn’t any further information regarding what these unique issues are, how they would be different from other media, or what kind of restriction would be appropriate.

<sup>62</sup> Petty (1993): 171.

### 3.2 Applying Commercial Speech Regulation to Pornography

The model of speech regulation that commercial speech legislation provides us is helpful because it both recognizes and deals with the fact that speech conveys content (i.e.: the price of a product or service) and does certain things. It demonstrates that speech is more than semantic meaning; considerations regarding not only what can be said in advertisements, but kinds of speech acts are allowed on the product itself suggests that a liberal state should be concerned with the pragmatics of certain utterances. After all, the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) regulate and even restrict speech all the time because of public health concerns (for example, the Pure Food and Drug Act of 1906 was enacted because the health industry had become a wild west of sorts for false health claims and dangerous ingredients that were rarely divulged to those taking the ‘medicine’ they were sold).

Just like audiences of commercial speech, who are seen as potential consumers that may then go out in the world and purchase services or products, consumers of pornography are potential participants in the sexual realm. By feeding its consumers the same or similar story of the bedroom over and over again, pornography attempts to sell a generic script that prescribes a particular role for women in the bedroom and the appropriate behavior of men to women. It should be noted here that this is not meant to be a claim that the makers of pornography have an intentional and malicious plan to sell this story, but that this is merely the result of appealing to the largest group of people likely to consumer their work, in a context that until after 1900 more or less denied notions female sexuality and confined female sexual release to the realm of medical science—seen largely as treatment for hysteria and not unlike the process of going into the chiropractor to have one’s back adjusted.<sup>63</sup> The primary concern of pornography is to make money, and in doing this pornographers end up portraying a particular sexual story that reflects the dysfunctional cultural narrative surrounding sex. In uttering pornographic sentences, pornographers end up performing a great number of locutionary acts; they convey meaning—and some of these sentences convey implicit messages as well as explicit ones. One of these implicit messages may be that women will never refuse sex. In this way, it may seem easy to understand how pornography might cause the subordination of women in some manner: *if* the pornography contains such implicit meaning (an implicitly performed locutionary act), and as a result, tries to convince its viewers (however unintentionally) that women always consent to, or want sex (the illocutionary act); whether or not it actually convinces its viewers is a matter of perlocutionary force. In other words, it may be the case that pornography is implicitly telling its viewers that women, no matter what words they use, are not performing illocutionary acts of the refusal of sex.

This is where I think we can put pressure on Langton, since she still has yet to convince us of the intelligibility of Mackinnon’s claim that pornographers’ utterances constitute the subordination of women, but we can see that there is some standard already to restrict speech for reasons other than the harm that speech may cause. The restrictions of commercial speech show us that not only can speech be restricted because of its content (because it is misleading or false) but it can be restricted because of the illocutionary act it is, since proposals of certain types also make commercial speech a candidate for restriction.

If we reject pornography as political speech and think of it as occupying a space much closer to that of commercial speech, we can see how it might not enjoy the same protections as political speech. I propose that because of the main aim of a certain type of mainstream pornography (to generate profit and commercial success), it does not qualify as political or social speech, attempting to make an

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<sup>63</sup> Maines, Rachel P. (1999) “The Job Nobody Wanted” *The Technology of Orgasm: “Hysteria,” The Vibrator, and Women’s Sexual Satisfaction*. Johns Hopkins University Press, Baltimore. (1)

important point about sexual relationships. I also propose that as a result of this agenda, this pornography ends up reflecting the sort of patriarchal themes and structures of power that dominate the culture of the market in which it is attempting to operate.

### *3.2.1 Protected Speech: Constitutional Protection for Ninth Amendment Rights Exercised via Speech*

As I discussed in section one, Jacobson states that though the right to refuse sex is an important right, it isn't protected by the First Amendment. While this acknowledgement heartening, it is puzzling that he does not provide us with an account of how a civil libertarian state might go about protecting such a right—this is especially puzzling as Jacobson directly states that Langton and MacKinnon's work doesn't provide the best means to prevent or address these crimes.

As far as the American Constitution is concerned, there is an amendment that protects against sexual crime, and homicide, and assault, etc. The Ninth Amendment is meant to protect the various rights that are not enumerated in the other amendments but are essential rights for the functioning of a democracy (having a state monopoly on violence, for example). The Ninth Amendment, as quoted below, does not list out all of these rights for a very good reason. The writers of the Bill of Rights were worried that if they listed all of these things out explicitly, it would seem as though the only rights citizens had, were those expressly outlined by the Constitution and its amendments.<sup>64</sup> The Ninth Amendment states that: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."<sup>65</sup> However, since these rights are not enumerated, the Ninth Amendment provides shaky, interpretive ground on which to stand.

Langton and Hornsby (1995) claim that the freedom of speech includes more than merely the right to utter sentences with particular meanings—and one of the things it includes is the right to perform an illocutionary act of refusal.<sup>66</sup> The best way to understand this, within the context of constitutional rights, is that the right to refuse is a right of a particular kind, that falls under the protection of the Ninth Amendment primarily but that can seek protection also under the First Amendment. I am going to talk about the right to refuse sex, rather than just the generic right to refuse, as I think a better and more cogent argument can be made for protecting this right (for example, it seems I don't have the right to refuse a speeding ticket, given to me by the police).

We may be able to make sense of Hornsby and Langton's claims if we think about the kinds of rights that are primarily exercised via speech. Perhaps refusals of sex are more like the right hail a cab: they are integral to an individual's normal functioning within society.<sup>67</sup> What Jacobson taps into in his comment on refusals of sex being important rights that have nothing to do with free speech, is that there is an underlying right to not be raped, or assaulted, and part of exercising this right is the ability to perform a refusal and to have that refusal respected. What Jacobson misses is that it is not only important to have your sexual desires respected, but that it is also important to be able to perform the speech acts that, under normal circumstance, play an integral causal role in having those desires respected. We may be able to look at the Ninth Amendment, there may be room to argue for the

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<sup>64</sup> In Bill of rights transcript text (no date) Available at: [http://www.archives.gov/exhibits/charters/bill\\_of\\_rights\\_transcript.html](http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html) (Accessed: 11 March 2015).

<sup>65</sup> Ibid.

<sup>66</sup> Hornsby and Langton (1998): 23.

<sup>67</sup> Here I am hinting at what I hope to argue for in the concluding chapter—that is, that some people are illocutionarily silenced in ways that impede their ability to function normally in society. If the uptake a man racialized as black gets when he performs a speech act like asking what the time is, is a threat, then it makes it difficult to live without being put in constant danger of being perceived as a risk.



protection of these rights—especially those that are worthwhile in their mere performance as well as their causal role of engendering the intended effects—which allow us to look for protection of these rights under the First Amendment. Jacobson, and other liberals who argue against Langton would do well to remember that not only do we have a First Amendment right to freedom of expression and religion, but we also have the right to petition the government for a redress of grievances, which plainly stated means we have the right to petition the government to set things right. This, of course is how the rights not specifically enumerated in the Constitution or its Amendments become legally protected. Rulings such as *Roe v. Wade* (which legalized abortion) and *Brown v. Board of Education* (which de-segregated public schools). There is a constitutional right to address the issue of women’s refusals being silenced in the U.S. Constitution, and by showing that this right is best protected by free speech law, I think a successful argument can be made for the regulation of pornography—especially when we shift our understanding of pornographic speech into something resembling commercial speech where we can argue that (for example) it proposes illegal transactions (in the form of the assault of women) and that it misleads its consumers by telling them that all women occupy a certain literal and figurative role in the bedroom.

## Conclusion

We began this chapter by looking at what Daniel Jacobson termed Langton’s “so-called” liberal foundations. Jacobson began by claiming that (at most) First Amendment rights protected locutionary acts alone. Jacobson contends (in his first paper) that if we were to allow for the protection of illocutionary acts under the First Amendment, we would also be committing ourselves to protecting those undesirable and harmful illocutionary acts such as urging other people to shoot someone. One only has to look at the actions of Charles Manson<sup>68</sup> who convinced his followers to murder seven people and then himself was held legally responsible for and convicted of those murders as well, to see how the prohibition of some illocutionary acts may be a preferable state of affairs.

Moving on from here, Jacobson emphasizes the point by presenting an example of an utterance that, given a shift of context goes from merely the expression of a political opinion, in the illocutionary sense, to an (illocutionary) incitement to act violently: Mill’s account of the corn dealer. In this example, the utterance, “Corn dealers are starvers of the poor.”—when spoken at a public debate, is an illocutionary act—it’s an assertion (a claim about the world), it is also an illocutionary act of expression, of opinion (giving testimony about how the speaker sees the world). Crucially, in the context of the public debate, it is not an illocutionary act of incitement to act violently; and as such is protected speech. If, however, the same locutionary act is performed (the sentence “Corn dealers are starvers of the poor”), in front of an angry mob, just outside the home of a corn dealer, it has become an illocutionary act of incitement to act violently. It is still (also) an expression of a political opinion, among other illocutionary acts. The utterance has also become the (metaphorical) spark needed to set off the fire of physical violence. Jacobson claimed that liberal free-speech theorists take content neutrality to be a key feature and what makes free speech protection valuable to democracy. Content neutrality ensures that the “free market” of ideas, at the very least, free from governmental intervention or influence.

From here we briefly looked at Jacobson’s second argument against Langton. In “Speech and Action” (2001), he stated that using speech act theory to understand matters of free speech (qua Mill) doesn’t make sense because Mill’s conception of “action” is narrower than that of the one used by Austin. On

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<sup>68</sup> Charles Manson’s followers (called “the Family”)—a group of mostly young women—broke into the home of Sharron Tate, and the home of Leno and Rosemary LaBianca and murdered seven people in total.

the civil libertarian conception, Jacobson seemed to suggest that what one can, or should be able to do with one's words is not a matter of free speech because these things are not matters of speech but of behavior.

Following on from this, we looked at Jennifer Hornsby and Rae Langton's response to Jacobson's concerns. In this section, we focused on Hornsby and Langton's claims regarding free speech. There were two main points made in service of addressing Jacobson's worries about free speech and speech acts: 1) that Langton wasn't proposing that the First Amendment did, or should protect *any* illocutionary act one wished, but merely that given the option between an illocutionary act of sexual refusal, and an illocutionary act that constitutes the subordination of women, perhaps liberal societies should consider regulating the latter, to protect the former. 2) Jacobson's sense of what kinds of speech acts, in which contexts should be protected is an impoverished one. The right to free speech, so their argument went, is really only useful to a democracy if you can also do certain things with your speech.

We then went on to discuss issues of commercial and political speech protection, in which I proposed that there may already be some precedent for the kind of regulation that Langton suggests (a fine, for example). My goal was to present a possible path for such regulation by suggesting that pornography should be treated less like political speech, and more like commercial speech. I began with the fact that even in the United States, some kinds of speech are regulated and even prohibited. While political speech is notoriously difficult to successfully regulate, even when it is clear that the speech meets either "clear and present danger" standards or, "imminent lawlessness" standards, it is the case that some kinds of speech are regulated. Commercial speech is one instance where what one can say, and how one is permitted to say it, is regulated by several US federal agencies such as the Federal Trade Commission, the Food and Drug Administration, and the Federal Communications Commission. In some instances, the regulation of the speech is motivated by public health concerns, and in others it is motivated by a desire to protect consumers and to allow them to make informed choices. I argued that if we think of pornography as being sorts of advertisements for sexual behaviours and practices and find that it meets any of the four conditions for regulation of commercial speech, we may be able to bring around liberal theorists to understanding that carefully thought-out regulation of pornography may promote or even protect liberal political interests and values.

Though I still believe that there may be a case for regulating pornography in some manner, I do not think the appeal to commercial speech works in the way I had hoped. If we do treat pornography as commercial speech—or even more like commercial speech than political speech—it seems we would be committing ourselves to the regulation of other kinds of media, that one may not want regulated. Blockbuster movies, for example, are false and misleading in their representation of the world. These movies also glorify illegal transactions, services and products as well. While I'm not sure this is all good thing (many racist, sexist ways of thinking are perpetuated and spread by huge films such as "The Avengers" that is part of the reality of the background world, that also motivates and grounds the main characters and plot lines), it seems difficult to know where and how to draw the line in the sand between what is pornography (or a profit-driven blockbuster movie), and what is art/political speech. If an art film is accidentally a hit and being consumed for the same or similar reasons one consumes pornography, does that mean that the film is now subject to the same regulations as "obvious" pornography? These worries, when put alongside the fact that what pornographers are trying to sell you is their pornography, makes my strategy seem less desirable than it initially was, and though I do think that concerns over public health may give us an opening to regulate pornography in some manner, it is an issue best set aside for the moment.

Though my proposal for regulating pornography did not work as intended, I think that it was worthwhile to explore other possible reasons for regulating speech, or for at least attending to pragmatic dysfunction on a political level. This is because, as we will see in the last chapter, an inability to do mundane things with our words may mean the difference between life and death. Such speech acts as the illocutionary act of requesting medical help, I believe, are clearly outside the purview of First Amendment protection. The ability to be taken as genuinely asking for medical assistance is something that is taken for granted, especially if your skin is white, and yet so many black men and women have died in police custody after unsuccessfully asking officers for medical attention in the city of Milwaukee that the local paper had an entire webpage, separate from the newspaper's official website, dedicated to the matter.<sup>69</sup> It is because my interest is in these cases, where the cause is more amorphous than what anti-pornography feminists claim in the refusal and sexual assault cases, that I believe we should let go of looking for a free-speech or First Amendment solution. I hope to show in the next few chapters, that we may want to look at the wider issue, for a culturally-bound cause. Specifically, I will point to culturally shared understandings and expectations of behavior (speech or otherwise) as one part of the problem. To accomplish this, however, we will have to first look at the kind of breakdown identified by Langton, that sets speakers' utterances off-course from their intended illocutionary acts. This will be our task in chapter three.

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<sup>69</sup> Website: <http://archive.jsonline.com/> Accessed: 28/09/2017

## Chapter Three

### *Hearer Understanding: The Role of Uptake in Illocutionary Acts*

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#### Introduction

If we are to expand the scope of our analysis beyond instances of sexual refusal and gender-based silencing, we must carefully examine one of Langton's key theoretical commitments: uptake as a necessary condition for performing the illocutionary act one intends. Langton's schema of silencing qua speech acts—more specifically, her account of illocutionary dysfunction, rests on and is grounded by, the role of uptake. The failure of the addressee to recognize what the speaker is up to (what illocutionary act she intends) that leads to the illocutionary disablement. If, however, it turns out that uptake is not necessary, that uptake is actually secured, there cannot be a breakdown in the manner she suggests.

In what follows, I will present one objection raised by Daniel Jacobson in his paper, "Freedom of Speech Acts? A Response to Langton," (1995). In questioning whether or not a freedom or civil right to perform at least some illocutionary acts<sup>1</sup>, Jacobson raises substantial doubts about whether or not it makes sense to leave the success of one's illocutionary acts in the hands of individuals and their idiosyncrasies. In service of this point, Jacobson presents us with an example that is meant to demonstrate that uptake is not necessary for illocutionary success—an example in which uptake is not secured, and yet one in which he thinks we can clearly say that the illocutionary act has been performed as intended. Following this, I will present Langton's response (co-written with Jennifer Hornsby) in 1998. Hornsby and Langton challenge Jacobson's claim that his example is proof positive that uptake is not a necessary condition. Specifically, they argue that in the situation he describes, the speaker's utterance does receive uptake (the addressee recognizes what kind of illocutionary act she is attempting to perform), and therefore poses no threat to Langton's original claims regarding uptake. Furthermore, they assert that getting those to whom we speak to understand what we're trying to do with our words is a key part of using language to communicate with others.

This dialogue between Jacobson and Langton (and Hornsby) is helpful as it provides an insight into what kind of dysfunction she has in mind. I propose that there are points in Langton's analysis that are crucially ambiguous and that perhaps it is better to reconsider uptake as a concept, as well what role it may have in understanding what our conversational partners are up to, with their utterances. I will begin by posing a question:

*Do hearers' need to possess the concept "illocutionary act" in order to recognize an instance of one?*

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<sup>1</sup> A point discussed in the previous chapter.

As Langton notes in her original paper, all three categories of speech acts (locutionary, illocutionary and perlocutionary acts) bear certain relationships to one another.<sup>2</sup> They combine in different ways in order to accomplish (or be) the sort of actions we intend.<sup>3</sup> These combinations may be what an ordinary language user is referring to when they say things like, “He wanted me to go out with him, but I refused.” The “refusal” here, presumably is meant to encapsulate the whole of the “speech act of refusal”—and likely if the man to whom the speaker is referring hasn’t understood the refusal, and turns up in the evening, ready to take her out, she will still say to the man that she had already refused the invitation.

This is not to say that philosophical terminology isn’t useful or cannot be applied to ordinary situations, or that it can’t explain language use. I merely mean to suggest that if we are going to make some action a necessary condition, especially one in which ordinary users of a language must perform, when the action is the recognition of a certain, quite specific phenomenon, there should either be a coordinating ordinary language term for it and users should already recognize it, or they should already possess the technical term. I will propose that we should shift away from defining uptake as the recognition of an intended illocutionary act, to a more general identification as to what the speaker may be trying to do—broadly speaking—with her words. We can keep our speech act terminology, and still use it to describe how to do things with one’s words, as I hope to show. Ultimately, I will propose that, at least in the case of sexual refusal, uptake (on the broader definition) is secured, and that the kind of instance described by Langton is better understood as a kind of disingenuous “misunderstanding” that can be better explained by cultural expectations that undermine the hearer’s ability to be a competent conversational partner.

## Section One: Setting out the Issue

### *Section 1.1 Jacobson (1995)*

In, “Freedom of Speech Acts? A Response to Langton,” Jacobson aims to undermine the claim that anyone has a free speech right to perform any illocution they would wish. Following this, he attempts to show that Langton’s theory commits her to saying that all kinds of instances of rape and sexual assault will not be prosecutable in a court of law because on her view, women never actually refuse. (See chapter two for my responses to these claims.) In the service of these two major claims, however, Jacobson spends a few pages detailing exactly why Langton is wrong to say that the woman experiences illocutionary disablement. Langton should, he argues, reject the Austinian premise that uptake is a necessary condition of determining illocutionary force. To drive this point home, he presents the following example:

Suppose Bill, in the grips of some paranoid fantasy, thinks Sally has only sent him an invitation in order to gloat—that she does not really want him to attend. Bill, we must imagine, does not conclude this from his cold reception at her other parties, but only because his dosage has been too precipitously reduced.<sup>4</sup>

Jacobson’s aim in presenting this case is to show that we should clearly say that Sally has succeeded *on an illocutionary level* to perform the act of invitation, in an instance where her speech act receives

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<sup>2</sup> Langton (1993; 2009): 33.

<sup>3</sup> Importantly, this does not exclude them from being the kinds of actions, or from bringing about results we either do not intend or want.

<sup>4</sup> Jacobson, D. (1995) “Freedom of Speech Acts? A Response to Langton.” *Philosophy and Public Affairs*. 24.1: 73.

no uptake. Sally's invitation fails to register with Bill for, "a purely idiosyncratic reason."<sup>5</sup> Though he stops just short of stating it outright, Jacobson wants us to see a clear parallel between the case Langton puts forward and his own, while coming to a different conclusion. He believes that Sally and Bill provide a counter-example that undermines Langton's assertions regarding the role of uptake. Through no fault of her own, Sally fails to achieve uptake. Bill's rapidly declining mental health blocks his ability to see her invitation as sincere, just like the man in Langton's case fails to see the woman as refusing sincerely because of his particular media consumption habits. Jacobson concludes that, "At most the aim of securing uptake, not its achievement is required...to deny this would be to hold the performance of an illocution hostage to the perversity of one's audience."<sup>6</sup> Does it make sense to allow the idiosyncrasies of others to determine whether or not our words constitute the act we intend? This idea seems ridiculous to Jacobson, however, as we will see in the next section Langton and Hornsby point out that this isn't as strange an idea as it may appear—especially if we take communication as an essential element of doing things with one's words.

### *Section 1.2 Getting from a Counter-Example to Conclusion*

Jacobson starts by making two observations, regarding illocutionary acts and effects. If I warn you that smoking will kill you, I am trying to get you to worry about your health, and to get you to stop smoking. These perlocutionary goals are what Jacobson calls "primary" effects.<sup>7</sup> Even if I fail to get you to stop smoking, or even to fully appreciate the warning, it is clearly the case that I have still successfully performed the illocutionary act of warning.<sup>8</sup> The problem arises when speech-act-theorist try to claim that a second, cognitive effect is necessary to perform the illocutionary act one intends. Austin, and Langton seem to be overstating matters when they insist that I also will have to get you to realize that I am trying to warn you. This is where our case of Bill and Sally come in: Bill misunderstands Sally's utterance because of some decline in his mental health. Sally fails to secure uptake, but Jacobson claims we should still obviously say that Sally has performed the illocutionary act of invitation, despite Bill's delusion that she is merely trying to gloat.

Jacobson's example is meant to show that Langton's claims regarding uptake yield clearly absurd results. Because Bill has suddenly gone off of some yet-to-be-identified prescription medication, his failure to recognize Sally's utterance as an invitation is clearly idiosyncratic.<sup>9</sup> Despite this, Jacobson thinks we should say that Sally has invited Bill in the illocutionary sense, despite the fact that Bill "misconstrues" her act.<sup>10</sup> He finds this intuition (that the intended illocutionary act is performed, despite a failure of uptake), "To be quite forceful."<sup>11</sup> This all leads Jacobson to the conclusion that *at most* it is the aim of uptake and not the achievement of it, that is necessary.<sup>12</sup>

To justify this claim, Jacobson turns to the issue of felicity conditions. In order to do this, Jacobson presents what he thinks are "preliminary generalizations", from which we can develop a more complex understanding of what conditions are or aren't necessary for which illocutionary acts<sup>13</sup>. He states that: "Whether the intention to invite is or is not necessary for an act to be an invitation, it

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<sup>5</sup> Jacobson (1995): 73.

<sup>6</sup> Jacobson (1995): 73-74.

<sup>7</sup> Jacobson (1995): 73.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Jacobson (1995): 74.

clearly is not sufficient.”<sup>14</sup> This, on Jacobson’s view, is likely generalizable. He makes this point central to his objections to Langton’s theory. He states that:

The only argument that I can find for this conclusion is her (correct) observation that intending to refuse is insufficient. But the woman we are imaging does not just intend to refuse; she makes her intentions manifest in language and behavior, that any competent auditor would take as unambiguous refusal.<sup>15</sup>

In other words, if the woman meets all the conditions for successfully performing an illocutionary act of refusal, and her addressee is a competent auditor<sup>16</sup>, they will recognize the utterance for what it is: a refusal of sex. It is important here to understand that Jacobson’s view rests heavily on the use of unambiguous wording (“No, I don’t want to have sex with you”) as well as on the fact that competent auditors will be able to pick up on non-linguistic evidence to figure out what the speaker is trying to do with her words.<sup>17</sup>

## **Section Two: Hornsby and Langton’s Response (1998)**

As I have already stated, Jacobson (1995) believes that he has provided an example where we clearly should say that someone has succeeded in performing their intended illocutionary act even though they fail to secure uptake. This is meant to show that uptake is not a necessary condition to determine illocutionary force.<sup>18</sup> Langton and Hornsby think that though his is “a nice story,” it does not succeed in the way that Jacobson (1995) believes it does. They say:

There is a difference between inviting someone to your wedding and wanting him to attend, and there is a corresponding difference between someone’s believing that he is invited to a wedding and his believing that his attendance there is wanted.<sup>19</sup>

In Jacobson’s example, Bill is sent an invitation by Sally who intends to invite him to her wedding. However, Hornsby and Langton point out that what goes wrong in this case is not on the illocutionary level. Bill recognizes the verbal act as one of invitation. Sally’s utterance does achieve uptake. In other words. Bill has recognized, “the speaker’s intention to perform the illocution in question.”<sup>20</sup> Bill’s mistake, then, is that he thinks that Sally also intends to perform another illocutionary act, which she doesn’t actually intend (bragging), and that she has a particular attitude about an effect that the utterance might bring about (she will feel irritated or annoyed if he shows up). This is not a misfire, according to Hornsby and Langton, but something more like an abuse.

Sally does succeed in her intended illocutionary act precisely because she meets all the felicity conditions to do so—including listener uptake. Bill’s mistake is more in line with what Austin would call an abuse. Something similar to making a promise without any intention of keeping said promise. They state:

Perhaps there is a sense in which she invites [...] “insincerely” but then that seems analogous to the person who promises ‘insincerely,’ not intending to keep the promise—an “abuse,” in

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<sup>14</sup> Jacobson (1995): 74

<sup>15</sup> Jacobson (1995): 77.

<sup>16</sup> Jacobson (1995); 78.

<sup>17</sup> Ibid.

<sup>18</sup> Here, until otherwise indicated, I will work with a conception of uptake that Langton and Hornsby set out in the beginning of their paper: hearer recognition of the speaker’s intended illocutionary act. (1998: 27)

<sup>19</sup> Hornsby, J and Langton, R. (1998) “Free Speech and Illocution.” *Legal Theory*. 4.1: 30.

<sup>20</sup> Hornsby and Langton (1998): 25.

Austin's terms, rather than a misfire. And the story of Bill and Sally seems to be, in Austin's terms, the story of a believed abuse, rather than a misfire.<sup>21</sup>

In other words, it seems to Hornsby and Langton that the violation in the case Jacobson describes is one in which Bill *believes* that Sally is inviting him, but that she is doing so insincerely. He believes that she has fully committed to the fact that Bill might well show up, and that if he does she is obligated to certain other acts (providing a meal, saying hello, etc.) that follow from the acceptance of an invitation to an event.

### Section Three: An Alternative Account

#### *Section 3.1 Considering their Response*

##### *3.1.2 Hornsby and Langton (1998)*

As we have just discussed, Hornsby and Langton (1998; 2009) point out that Jacobson's example is consistent with Austinian speech act theory (and therefore does not undermine Langton's own account). Crucially, they contend that Sally's utterance is recognized as being an illocutionary act of invitation. Her utterance is only mistakenly taken to be insincere in the ordinary sense of the term. The fact of the matter—so they claim—is that Bill understands Sally is inviting him but believes (erroneously) that she would be unhappy were he to accept. In other words, Bill believes that Sally is inviting him, but does not have the relevant propositional attitudes that are conventionally associated with her (illocutionary) speech act. Like the person who issues a promise with no intention of keeping it, Bill believes that Sally has committed an abuse.<sup>22</sup>

This discussion sheds light on just what kind of communicative breakdown Langton has in mind, in a crucial way. At the beginning of Hornsby and Langton's discussion of Jacobson's example, they state that, "Perhaps there is a way in which she [Sally] invites... 'insincerely'."<sup>23</sup> Sally does in fact successfully perform an illocutionary act of invitation, as it is recognized by the person being invited as such. It succeeds in being an invitation, on an illocutionary level, but is thought to be performed in what one may consider "bad faith". The addressee believes that Sally does not intend Bill to accept her invitation. Given all this, we are left with a question: What is the difference between being mistakenly taken as performing a speech act insincerely (in the Austinian sense) and ending up with an illocutionary act that misfires, and is (mistakenly) taken to be committing an abuse; or is the mistake made on the part of the male in Langton's account more like our insincere promise? In the next section, I will turn to an alternative construal of Langton and Hornsby's claims.

#### *Section 3.2 Uptake: A Conceptual Analysis*

##### *3.2.1 Recognition of "Intended Illocutionary Act"*

Our next task is to look at whether or not Langton's definition of uptake accurately or realistically represents what happens when someone tries to perform an illocutionary act (of and kind). In what follows I will propose that because ordinary speakers do not possess the concept or term "illocutionary act", it makes very little sense to take uptake to be the recognition of intended illocutionary acts. This is especially likely, I believe, because the definition of this concept, and the difference between illocutionary and perlocutionary acts is a topic of much controversy among philosophers of language, who are (presumably) experts. Our question, then, is how can an ordinary

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<sup>21</sup> Hornsby and Langton (1998): 30.

<sup>22</sup> According to Hornsby and Langton's interpretation of Austin, in both their 1998 article and their 2009 book chapter which appeared in Langton's 2009 book, *Sexual Solipsism*.

<sup>23</sup> Hornsby and Langton (1998): 30.



language user identify an illocutionary act, if they do not know what it is? If this is the case, then we either need to give up on the claim that uptake of intended illocutionary acts is a necessary condition of its performance, or we need to develop a different understanding of uptake.

*3.2.2a Ordinary Speakers and Operative Concepts: do hearer's need to have the concept of "illocutionary act" in order to recognize such a thing?*

The justification provided for the primacy Langton and Hornsby place on uptake (in the illocutionary sense) begins with a discussion of a concept put forward by Hornsby (1984).<sup>24</sup> Reciprocity is meant to illustrate that language is, at the most fundamental level, communicative.<sup>25</sup> To do *anything* with words, Hornsby states that there must be—at the very least—a “minimal receptiveness on the part of language users in the role of hearers.”<sup>26</sup> For the most part, sharing a language is little practical use if others aren't able to willing to listen. Part of being a competent listener, then, seems to require a willingness to figure out why the person is speaking and what they are trying to achieve. Hornsby and Langton (2009) state:

When reciprocity is present, the speaker's utterance works as she means it to. It's working so appears to depend on nothing more than speaker and hearer being parties of a normal, linguistic exchange, in which a speaker's attempt to communicate is successful. A speaker tries to do an illocutionary thing; a hearer's recognizing that the speaker is trying to do that thing is then sufficient for the speaker's actually doing it.<sup>27</sup>

Hornsby and Langton want to separate the illocutionary from the perlocutionary and assert here, as well as elsewhere, that illocutionary acts should be the primary concern if we're interested in how language works, while perlocutionary acts are of concern when considering the “extra-linguistic” or “incidental” consequences of speaking.<sup>28</sup> A problem arises however, when we look at the following passage from Hornsby and Langton, which appears slightly later and is meant to further convince us of the necessary role of uptake:

It must be acknowledged that a speaker might sometimes be said to have gone in for an act of a kind that Austin would have classified as illocutionary even though there was actually no uptake for example, we can imagine someone saying, “I warned him, but he didn't realise that I was serious.” However, we can equally well imagine someone saying, “I tried to warn him, but to no avail.” If we are to follow Austin in treating uptake as a mark of illocution, thereby preserving the idea of illocution as communication, then we need to speak in line with the latter case, where the hearer's failure of uptake is seen as showing that the speaker had not warned him. We need, that is, to focus upon what is necessary for doing such things as warning *fully successfully*, as one might put it. **(The speaker who says that she warned him, but that he did not appreciate that she was serious, is someone who sees that she had failed “fully successfully” to warn him.)** We can allow, then, that the verb “warn” might apply to someone nonetheless that there is a point in saying that no

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<sup>24</sup> Hornsby, J. (1984) “Illocution and its Significance” In: *Foundations of Speech Act Theory: Philosophical and Linguistic Perspectives*, ed. S.L. Tsohatsidis. London: Routledge. 187-207.

<sup>25</sup> I take them to exclude certain speech acts from their claim: those speech acts that are not communicative such as catharsis for example—those utterances whose main purpose is expressive rather than communicative. In addition to this, they explicitly exclude those speech acts that exist within formal institutions, such as a judge sentencing a criminal in a court of law. Their focus is on communicative speech acts, which “require only the institution of language use itself.”

<sup>26</sup> Hornsby, J. and Langton, R. (2009) “Freedom of Illocution? A Response to Daniel Jacobson” In: *Sexual Solipsism*, by R. Langton. Oxford: Oxford University Press. 75-87.

<sup>27</sup> Hornsby and Langton (2009): 78.

<sup>28</sup> Hornsby and Langton (1998): 24.

illocutionary act of warning—no “fully successful” act of warning—is performed unless there is uptake on the hearer’s part.<sup>29</sup>

In other words, we might want to say that we’ve performed the illocutionary act, even if no uptake was secured. However, since they hold that uptake is a necessary condition for determining illocutionary force, we should still say that no illocutionary act has been performed. They state that even though on an ordinary language level we might say that you have warned, if we’re to stick with Austin, we should then say that no *fully successful illocutionary act of warning has been performed*. The problem here is that their explanation of what it means to “fully succeed” in warning someone, seems to implicitly assert that what’s missing (when there is a lack of uptake on the illocutionary level) is a failure to produce the desired effect in the person one is trying to warn. If the listener did not appreciate that the speaker’s warning was serious, and thus did not take the danger seriously, then surely, she has failed to get the listener to heed her warning. The failure described here seems to be a failure to use an illocutionary act to achieve a specific perlocutionary goal. To fully succeed on their account, it seems we have to use certain words (locutionary acts), to perform a certain illocutionary act as a means to a particular perlocutionary end.<sup>30</sup>

### *Section 3.3 Illocutionary Deafening<sup>31</sup>*

#### *3.3.1 Implications and Sexual Refusal*

Because ordinary speakers do not possess the concept “illocutionary act”, we either need to find a new definition of “uptake” from the one offered by Hornsby and Langton (1998). As I have discussed above, it may make more sense to take a more holistic approach to the issue. Because the addressee understands (as a competent language user), the conventions of most kinds of speech acts (where this term refers to the locutionary, illocutionary and perlocutionary acts, taken together), they have the ability to make an informed guess as to what kind of thing the speaker is trying to do with her words. The trouble, as pointed out in Langton’s example, is that sometimes our addressees do not take our utterances at face value—which in isolation, is neither unusual or necessarily wrong. However, as Langton’s case shows us, sometimes this failure to take our utterances as sincere is a function of the interlocutor’s biases, false beliefs and prejudices. All of the information is there for the addressee to understand the kind of speech act we are attempting to perform, but because of a wider narrative about certain social groups, they are unable to fully understand us. This phenomenon I will call “illocutionary deafening” because in reality, it is the addressee who has been undermined in their capacity to understand certain utterances when performed by stereotyped groups. In addition to having the obvious consequence of making it difficult to perform perfectly ordinary actions with one’s words, and leading to potential physical violence or harm, illocutionary deafening also serves to enhance already disadvantaged social positions.

In what follows, I will outline what this means for our case of sexual refusal before moving on to examine the usefulness of cultural scripts, which may allow us to gain an understanding of how and

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<sup>29</sup> Hornsby and Langton (1998): 26.

<sup>30</sup> It should be noted that the section of Hornsby and Langton that is quoted, is not elaborated on further in their paper.

<sup>31</sup> It should be noted that though it is unfortunate that this term casts deafness as an inability to understand, this is the best term I’ve been able to come up with thus far. I have decided to use this phrase, in order to indicate an instance where the audience is rendered unable to hear the illocutionary act—where, to the audience, it might as well have not been performed at all (until I can find a more suitable term to replace it). Additionally, it seems to be the most natural term, since the literature already is framed in terms of ‘silencing’—though I am aware of the problems and would like to find a better one.

why culturally shared understandings of the world shape expectations of behavior that undermine interpretive abilities in some contexts.

Contrary to what she claims, I believe that Langton has committed herself to a story in which the failure is not on the level of a misfire, but on the level of a believed abuse. Furthermore, though I don't think it is feasible to provide a convincing argument for or against the role of uptake in any or all illocutionary acts, I do think that we can say the following about uptake:

- a) Because ordinary language users don't (typically) have a concept of "illocutionary acts", it seems unlikely that there will be a recognition of illocutionary acts alone, but uptake of the speech act as a whole.
- b) If we take uptake to include beliefs about the perlocutionary goals of the speaker and the conventional uses of locutionary acts, then we can at least say when uptake is or is not achieved.
- c) If we change our conception of "uptake" to be more in line with how ordinary language users try to understand one another, we can say that the illocutionary act has been performed, but the addressee fails to recognize its sincerity and therefore, the utterance fails on a significant pragmatic level. In this case, the listener is blind to this fact due to some outside factor (such as an identity-based prejudice on the part of the listener, against the speaker).

The first thing we should say about Langton and uptake is that if she is committed to Austinian speech act theory, she cannot classify an attribution of insincerity to the speaker as a failure of uptake. The reason for this is that Austin sets aside issues of insincerity as separate from the types of infelicity that keep a speech act from being performed. He states that:

$\Gamma^1$ : Where, as often, the procedure is designed for use by persons having certain thoughts or feelings, or for the inauguration of certain consequential conduct on the part of any participant then a person participating in and so invoking the procedure must in fact have those thoughts and feelings, and the participants must intend so to conduct themselves subsequently.<sup>32</sup>

This is one of the two sincerity conditions that we spoke about in the earlier discussion about Jacobson's invitation example. If I'm not actually appreciative of what you've done for me, something's gone wrong. However, this type of infelicity doesn't keep the act from being performed. Austin says that, "In the two  $\Gamma$  cases the act is achieved although to achieve it in such circumstances, as when we are, say, insincere, is an abuse of the procedure."<sup>33</sup> This is why we cannot consider attribution of insincerity to be a failure of uptake.

Austin does not explicitly mention uptake when he classifies types of infelicity. He does however state that, "It is obviously necessary that to have promised, I must normally: (A) have been heard by someone, perhaps the promisee; (B) have been understood by him as promising."<sup>34</sup> This language is decidedly unhelpful, as it is not clear in what sense it is necessary (is it necessary for the success of the perlocutionary act, or for the illocutionary act). There is another section in which Austin expands on what he means by getting the listener to understand:

- (i) Unless a certain effect is achieved, the illocutionary act will not have been happily, successfully performed. This is to be distinguished from saying that the illocutionary act is the achieving of a certain effect. I cannot be said to have warned an audience unless it hears what I say and takes it in a certain sense. An effect must be achieved on the audience if the illocutionary

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<sup>32</sup> Austin (1962): 15.

<sup>33</sup> Austin (1962): 16

<sup>34</sup> Austin (1962): 22.

act is to be carried out...Generally the effect amounts to bringing about the understanding of the meaning and of the force of the locution. So, the performance of an illocutionary act involves the securing of uptake.<sup>35</sup>

If we carefully look at this explanation, it seems that Austin's assertion is that happy illocutionary acts require us to get the listener to understand the meaning of our words and the force of the illocution. Remember that misfires (failure to be the act intended) and abuses (failures of comportment) are the major sub-types of infelicities, which Austin calls "unhappy" speech acts. It is not at all clear that a failure of uptake leads to a misfire on the illocutionary level. Furthermore, it is not clear that uptake, as described here, is merely the recognition of an intended illocutionary act.

It's this paragraph from Austin that allows for the following claims:

(A) Langton's committed to an example where the listener falsely believes that the speaker is committing an abuse of the speech act. Even if one takes uptake *purely on the illocutionary level* as a necessary condition to determine illocutionary force, the speech act still achieves the necessary uptake and there is no instance of illocutionary disablement in her example, as she describes it.

(B) We use the meanings of words, conventions surrounding those words, and the usually associated goals of utterances with those words in combination with contextual information to form an understanding about the speaker's utterance. In other words, we use context, conventional uses of locutionary acts, and beliefs about the perlocutionary goals of the speaker, and the conventionally associated illocutionary acts to come to an understanding about what she is trying to do with her words.

What does this mean for our case of sexual refusal? If a man consumes a certain type of pornography and learns, as Langton claims, that women don't perform sincere refusals of sex, we can now describe the mistake the listener makes slightly more clearly (even if it is long-winded):

- 1- The man makes his sexual advance.
- 2- The woman utters the sentence: "No. I don't want to have sex with you."
- 3- She does so, intending to stop the sexual advances by using her words to perform the refusal.
- 4- She thereby performs the illocutionary act of refusal.
- 5- Because of the man's consumption of pornography (and other biases), he has false beliefs about the woman's intentions. He recognizes the words as ones used to typically perform refusal. However, he also falsely believes she intends to secure the effects of consent.
- 6- He takes the words "No. I don't want to have sex with you," as an insincere performance of the illocutionary act of refusal.
- 7- This leads to a perlocutionary failure—the woman does not achieve her goals of being understood as sincere, and of not having sex.

Before moving on to analyzing the mechanics by which illocutionary deafening may come about, in a given speech community, it will be helpful to discuss the details of this particular strain of linguistic injustice. Part of what makes the woman in Langton's account a victim of injustice, is that she follows the explicit rules of the linguistic community she finds herself in, for the kind of thing she wants to do with her words. Despite following these rules (what Rebecca Kukla will call "discursive conventions"), the woman is unable to do as she intends, simply in virtue of the social position she inhabits. That there is nothing that she can do that would count as a refusal—at the illocutionary level—is a key feature of Langton's work. The woman's gender keeps her from being able to perform

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<sup>35</sup> Austin (1962): 115-116.

the illocutionary act of refusal. The woman's addressee (the pornography-consuming man), fails to recognize that she is attempting to refuse his sexual advances because of a false belief he possesses: that women don't perform illocutionary acts of refusal in a sexual context. The power of Langton's account is in its ability to demonstrate just how effectively and thoroughly it limits the range of possible behavior of women, and the extent to which women are powerless to do anything about the situation, themselves. In such situations, the person with relatively more social (and/or political) power is also the only person that can ameliorate the situation. Even so, if we take Langton at face value when she asserts that the case she describes isn't an instance of a refusal being recognized and ignored, there seems to be little that can be done *in the moment*. This, of course, is why Langton's account is helpful to anti-pornography feminist arguments. The solution to such encounters is the regulation of pornography—among other things. By the time our pornography-consuming man makes his sexual advances, he's already internalized the lesson pornography teaches: that women *just don't* refuse sex.

In the end, if we take uptake to be a necessary condition for performing an intended illocutionary act, we will need to shift to the more holistic version that I have just set out. This allows for a more fine-grained approach to the analysis and diagnosis of pragmatic dysfunction—especially when looking at cases that arise from or are a part of, a set of unjust social or political relations. This also allows for a more accurate account of the metalinguistic conceptual repertoire of ordinary language users.

Part of this more fine-grained approach is shifting at least part of the focus to the addressee—after all, it is in virtue of a set of their false beliefs that leads to the misunderstanding that Langton describes. The speaker follows the standard conventions for performing a refusal but is not able to actually perform such an action (illocutionarily or perlocutionarily), because her interlocutor holds a false belief (that women *just don't* perform refusals of sex). It is the addressee's false belief that leads him to come to the wrong conclusion. There is nothing the speaker in this situation can do. Her gender and her conversational partner's false beliefs about her gender are what scuppers her efforts. This is what leads to the illocutionary disablement, that Langton puts forward.

But what about the addressee? Borrowing in part from Bird (2002), Miranda Fricker (2007) and Patricia Hill Collins (1990), I would like to put forward "illocutionary deafening", to describe what happens to addressees of the kind we have been discussing: someone who fails to understand what a person from a particular identity group is doing with their words, in virtue of the speaker's perceived identity. Illocutionary deafening arises from a deficiency on the part of the audience that therefore undermines their ability to perceive the intended speech act as intended. Though the addressee is a competent user of the language (contrary to what Bird argues in his 2002 response to Langton), their comprehension abilities when speaking with a person from an oppressed identity group are significantly compromised by their prejudices.<sup>36</sup> It is here that I am following Collins and Fricker: in these kinds of situations, those with privilege are particularly disadvantaged and susceptible to illocutionary deafening, due (at least in part) to the limited scope of their ability to understand and access oppressed people's perspectives.<sup>37</sup> The important point here is that the speaker provides the hearer with all of the necessary information (utters the right words, in the right way, in the appropriate context and so on) they will need to recognize the intended speech act, and the hearer fails to do so because of a flawed belief or expectation of behavior.

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<sup>36</sup> In the next two chapters I will discuss how shared cultural understandings impinge on individual comprehension.

<sup>37</sup> Though I should note that illocutionary deafening may also apply to interactions wherein the addressee has any preconceived notions or expectations regarding the speech behavior of the speaker.

In the case of illocutionary deafening, a woman says, “no,” intending to refuse. In any other situation, this would be understood as such. If at the grocery store, the cashier asks the woman if she wants a bag and the woman responds with, “no thank you,” the cashier will likely take the utterance at face value. He understands that she doesn’t want a bag for her groceries, and that she has refused his offer.

However, when the cashier goes home to his girlfriend and makes sexual advances towards her, and she says, “Not now, I’m busy,” because he has internalized the lessons of the kind of pornography Langton and others have in mind, he will be unable to recognize the speech act his girlfriend intends. He doesn’t think she has performed a refusal, of any kind. He clearly knows what a refusal is (as evidenced by the first part of the example), and that he understands the linguistic conventions of refusal within his speech community. This is why we can’t go as far as Bird, to say that the man isn’t a competent user of the language. On the other hand, his privilege and resulting limited viewpoint and experience seems to keep him from understanding that women sometimes don’t want to have sex, and therefore perform sincere refusals of it. The cashier has been given all the requisite information to come to the right conclusion, regarding what speech act she is performing, but is unable to perceive it. This is what I mean by the phrase “illocutionary deafening”.

## Conclusion

I believe that we can say that the woman has performed an illocutionary act of refusal, but that her hearer takes her to be performing it insincerely. He believes she is communicating that she *does* want to have sex with him, because of the biases, prejudices and false beliefs he possesses. The biases of the addressee are what keep him from understanding the primary goal of her utterance (to stop the sexual advances). The man is blocked from understanding the sincerity of her refusal, because of his own deficiencies. This is what I am calling “illocutionary deafening”, which brings with it rather important perlocutionary failures—about which I will say more in chapter five. It should be understood as a kind of perceptual failure on the part of the addressee, arising frequently (though not exclusively) from unjust social relations. As I will demonstrate in chapter five, such perceptual blocks can end not only in sexual assault or rape, but also in death—as we will see in the case of Derek Williams. Williams was a black man who was chased down and subsequently restrained in the back of a police car, after repeated pleas for medical attention.<sup>38</sup>

In this chapter, we started with a question of how to characterize exactly, the kind of pragmatic failure Langton was describing, and the kind of harm she had in mind. This started with a challenge to Langton’s theory made by Daniel Jacobson, who argued that Langton (and Austin) overstated the role of uptake and that it was merely the aim of securing uptake, and not its actual achievement that is necessary. From here we moved on to considering Langton’s 1998 reply, written with Jennifer Hornsby. In this section, we looked at their argument against Jacobson, in which they claimed that the communicative aspect of language means that our utterances are reliant on the idiosyncrasies of individuals. Rather than this being a problem, they explained that this a key feature of doing things with words. They also responded to Jacobson’s example of Sally and Bill by arguing that Bill has understood the kind of illocutionary act Sally was attempting to perform, and so his example is not a threat: Sally sent the invitation, Bill understands that this is an invitation but doubts the sincerity behind it. Her utterance receives uptake, and the speech act of invitation has been performed. Finally, I put forward an alternative understanding of Langton’s case of sexual refusal. Specifically, I suggested that ordinary speakers of language do not possess the concept “illocutionary act” and therefore cannot be said to have recognized an intended illocutionary act. I suggested that a more holistic approach be adopted that took into account the words uttered, the guesses about intended effects, and so on, to try and understand the speech act (in a general sense of the term), the speaker is

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<sup>38</sup> Illocutionary deafening need not be a product of unjust social relations, or an instance of injustice in-and-of-itself. As I have mentioned previously in this chapter, I only intend to apply my claims regarding uptake and illocutionary deafening to non-institutional, informal speech acts.

going for. We will move on now to looking at a tool developed by socio-linguists that should help us understand the kinds of cultural norms and false narratives that undermine an addressee's interpretive capacities and contributes to illocutionary deafening.

## Chapter Four

### An Overview of Cultural Scripts

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#### Introduction

In their introduction to a special issue of the journal, *Intercultural Pragmatics*, Cliff Goddard and Anna Wierzbicka describe cultural scripts as a way of, “articulating cultural norms, values, and practices.”<sup>1</sup> It is a way to bring these elements into semantics<sup>2</sup> and pragmatics. Though Goddard and Wierzbicka emphasize the usefulness of cultural scripts in decoding speaker meaning, I hope to show in this, and the following chapter, that cultural scripts may be helpful in understanding just why some audiences might be unable to recognize what other speakers are doing with their words. In this chapter, I will outline what cultural scripts are, starting with Goddard and Wierzbicka’s 2004 paper. I will then look to one of the papers included in the special edition of *Intercultural Pragmatics*, where Goddard and Wierzbicka’s paper appears. This will help in illustrating how cultural scripts are used in practice and see how they shape the way in which we process the words of others.

#### Section One: What are Cultural Scripts?

Goddard and Wierzbicka state that: “Cultural scripts are intended to capture background norms, templates, guidelines, or models for ways of thinking, acting, feeling and speaking, in a particular cultural context.”<sup>3</sup> In other words, cultural scripts are sets of cognitive resources that are socially, culturally and contextually bound. They inform speech— (and perhaps behavioural)—practices, however Goddard and Wierzbicka are clear to point out that cultural scripts aren’t in-and-of-themselves descriptions of behaviour.<sup>4</sup> Cultural scripts are the norms of behaviour that (partly) dictate what we say and do, and they also allow us to interpret the words and behaviours of others. I will discuss precisely what this means in more detail in a later section. This discussion will include cross-cultural communication, which will be most important for understanding the mechanics of faulty perceptions of speech-acts.

I will now turn to a set of examples provided by Goddard and Wierzbicka’s 2004 paper, which will allow me to outline just what cultural scripts are and what they are not.

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<sup>1</sup> Goddard, C. and Wierzbicka, A. (2004) “Cultural Scripts: What are they and what are they good for?” *Intercultural Pragmatics* 1(2): 153.

<sup>2</sup> A point they emphasize in their article; Goddard and Wierzbicka (2004): 153.

<sup>3</sup> Goddard and Wierzbicka (2004): 157.

<sup>4</sup> Goddard and Wierzbicka (2004): 157.



## *Section 1.2: Some Examples*

It will be helpful to look at a set of cultural scripts that Goddard and Wierzbicka provide to illustrate several important points and features of cultural scripts. I will reproduce their examples below, before moving on to an explanation of the various aspects they discuss.

- A) [people think like this:]  
When a person is doing something  
It is good if this person can think about it like this:  
“I am doing this because I want to do it  
Not because someone else wants me to do it.”
- B) [people think like this:]  
When I want someone to do something  
It is not good if I say something like this to this person:  
“I want you to do it  
I think that you will do it because of this”
- C) [people think like this:]  
When I want someone to do something  
It can be good if I say something like this to this person:  
“Maybe you will want to think about it  
Maybe if you think about it you will want to do it.”<sup>5</sup>

These examples from Goddard and Wierzbicka (2004) are meant to illustrate some key features of cultural scripts. All three are Anglo scripts, the first of which expresses what sometimes is called, “personal autonomy”.<sup>6</sup> Script B) expresses the consequential cultural “inadvisability of issuing overt directives,” while script C) expresses the alternative, and culturally sanctioned strategy of, “presenting the addressee with a quasi-directive message in the guise of a suggestion.”<sup>7</sup>

In other words, the first script—script A—can be seen as a description of a dominant script of sorts, that informs the following two. Script A gives us a norm of personal autonomy, which when paired with Script B) demonstrates that a direct order violates personal autonomy in the Anglo context. Script C, then offers us a way to achieve B without violating A.<sup>8</sup>

From here Goddard and Wierzbicka make a few general observations, which I have summarized below:

- 1) Societies aren’t homogeneous. Not every member of the culture will accept or endorse the scripts. For example, my father—a 61-year-old Anglo-American man—firmly endorses the exact opposite script to that expressed in B and C. His belief is that if you want someone to do something for you, it is best to follow this script instead: [people think like this:] when I want someone to do something it is good if I say something like this: “I want you do it. I think you will do it because of this.” Additionally, looking at the differences between male and female norms around directives give us ample evidence for the fact that B and C often apply more to women

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<sup>5</sup> Goddard and Wierzbicka (2004): 156.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> It’s worth noting that the term “autonomy” as it is being used in this literature, in a loose and popular sense,

than men, though it seems highly dependent on context. (For example, a directive for a raise, versus a directive for sexual pleasure will be different for each group, in different contexts.)

- 2) The framing phrase, “people think like this” indicates that there is a claim that even if an individual doesn’t personally endorse, or identify with the script, they can nonetheless be familiar with it—and can use it as an interpretive resource. For example, though my father rejects A-C, he can still recognize that they exist and are in use by others. He will therefore, be able to understand when they are in use. In other words, he’ll be able to recognize when an endorser of these scripts (A-C) is issuing what Goddard and Wierzbicka call, “quasi-directives in the guise of a suggestion.”<sup>9</sup>
- 3) Cultural scripts can vary in level of generality and can have varied relationships. Goddard and Wierzbicka state that: “A) can be seen as one of the ‘master scripts’ of mainstream Anglo culture.”<sup>10</sup> It is an overarching script that captures a prevailing cultural attitude and has ramifications that stretch beyond a wide range of cultural domains.<sup>11</sup> This is the case, they note, even though script A doesn’t have much to do with social interaction or speech. Likewise, B and C outline some of the consequences of social interaction. Finally, B and C state specific norms of interaction, while A states a norm of interpretation.
- 4) Scripts have strong evaluative components which are indicated by framing phrases such as: “It can be good if...”; “It can be bad to...”. Additionally, people’s perception of what they are and are not able to do can be useful to frame scripts (for example, “I can say...” or “I can’t do...”).
- 5) The “when/if” introductory components are representative of the relevant parts of social contexts. In our examples, they are both schematic and relatively simple but can also be much more complex.
- 6) Relatedly, scripts can have complicated and nuanced language-specific concepts, relevant to the cultural determination of the social context—what Goddard and Wierzbicka call, “language-specific ‘semantic-molecules’”.
- 7) The simple fact that a group of people share a language doesn’t entail that they will share all their cultural scripts (and related ethnopragmatic behavior).<sup>12</sup> Goddard and Wierzbicka point out that regional and social variations (that are related to significantly varied histories and lived experiences) of different speech communities, can and do occur. Alternatively, different contiguous languages in speech areas may share some of the same or similar cultural scripts. Goddard and Wierzbicka state that scripts give us a fine-grained model to describe cultures, and as a result they allow for the recognition and description of change and variation among and across cultures.
- 8) Finally, and briefly Goddard and Wierzbicka point out that English is as subject to cultural variations as any other language—though perhaps obvious we will explore this point further in this, and the following chapter.<sup>13</sup>

## Section Two: A Case Study

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<sup>9</sup> Goddard and Wierzbicka (2004): 157.

<sup>10</sup> Ibid.

<sup>11</sup> Goddard and Wierzbicka (2004): 158.

<sup>12</sup> This will be of concern in chapter five, and a point to which I will return.

<sup>13</sup> Goddard and Wierzbicka (2004): 158.

It will be helpful to take a look at cultural scripts in action. We will look at the work of Jock Onn Wong (2004), which appears in the same special issue of *Intercultural Pragmatics* that Goddard and Wierzbicka's earlier cited work appears. Wong (2004) pulls evidence about language use and real-world examples to analyze the connection between cultural beliefs about personal autonomy, and the way in which a person uses their words to get another person to do something. In other words, Wong proposes that the relative importance (or unimportance) of individual autonomy may influence the form that requests, and directives normally take. This will be helpful for many reasons. First, as already stated it provides a way in which to understand how scripts contribute to the decisions of culturally situated speakers, and how cultural values might get in the way of successful cross-cultural communication. Additionally, by looking at the example of directives and requests, we will be better equipped to diagnose what might be going on in the case of discursive injustice as described by Rebecca Kukla, in the following chapter.

This case study of the role of personal autonomy in directives and requests will provide a way to understand the relationship that speech communities and cultural norms (via scripts) have with regard to interpretation and communication.

Wong's paper, "Cultural Scripts, Ways of Speaking and Perceptions of Personal Autonomy: Anglo-English vs. Singapore English"<sup>14</sup>, analyses two different language groups to reveal the difference in cultural values between two English-language communities in Singapore. Specifically, Wong outlines the different background cultural norms that affect how members of each speech groups go about getting others to do things for them. He hypothesizes that Anglo-English speakers value personal autonomy, which alters the form of their requests and directives so that these speakers tend to use tag questions and acknowledgements of the other person's freedom and ability to do otherwise (which can be either explicit or implicit). Wong proposes that this norm is absent in Singapore English groups, which leads to the sort of requests and directives that may sound curt and perhaps rude to an Anglo speaker of English.

In what follows I will first present how norms about autonomy impact Anglo-English directives and requests I will then look at how this lack of personal autonomy scripts impact Singapore English linguistic practices. Following this I will present Wong's own remarks about the implications of this difference before putting forward my own remarks about the connection between this work and our discussion of illocutionary deafening.

Before diving into Anglo-English scripts, however, it is important to briefly address stereotypes and scripts. Specifically, in the case of Wong's research, there is care taken to cite empirical work (what he calls, "linguistic evidence"<sup>15</sup>)—though this research is not explicitly discussed in any great detail. Wong also employs real-world examples that are pulled from submissions and records from library and governmental interactions with the public<sup>16</sup>, and restates the limits of cultural scripts. In service of this, he specifically reiterates that generalizations in scripts are not meant to include a proposal that all those in the speech community will agree, subscribe to, or use the script(s).<sup>17</sup> The proposal is merely that the

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<sup>14</sup> Wong, Jock Onn. (2004) "Cultural Scripts, Ways of Speaking and Perceptions of Personal Autonomy: Anglo-English vs. Singapore English" *Intercultural Pragmatics*. 1-2: 231-248.

<sup>15</sup> Wierzbicka (2002): 401-402.

<sup>16</sup> Wong (2004): 233.

<sup>17</sup> In fact, Wong points out that many can even actively reject the script.

scripts feature in the community's linguistic practices to some extent. The idea here is that our cultural beliefs shape the way in which we learn and develop ways to use the tools of language (word choice, question tags, tone and so on) and that these choices can subsequently provide information about the values of the decision maker.

### *Section 2.2 Anglo-English Personal Autonomy and Directives*

In what follows I will outline Wong's use of scripts to analyze Anglo-English culture and its speakers' use of interrogatives and requests to issue directives. Following this, I will present Wong's analysis of Singapore English and his comparison of the cultural norms of each group, surrounding the issuance of directives.

Wong starts by specifying that he takes Anglo-English speakers to be those users of English that is, "spoken by 'white person [in Singapore] from a traditionally English-speaking country.'" <sup>18</sup> His claim is that Anglo culture values the individual's right to do as she wants, just so long as that doesn't interfere with the rights of others. He quotes Wierzbicka who states that:

... [the Anglo-Saxon cultural tradition] abhors interference in other people's affairs (*It's none of my business*) ... What Anglo-Saxon culture abhors in the impression that one individual is trying to impose his or her will upon another individual. <sup>19</sup>

In other words, Anglo-English culture puts emphasis on the personal autonomy of the individual—and values the right for a person to do as they wish as long as this doesn't interfere with any other's individual rights. When what I want to do, and what you want to do might clash, Anglo-English culture dictates that we look for a compromise. Additionally, what you do is none of my business even if I find it offensive or strange. These values and cultural norms translate to particular prescriptive practices around directives in Anglo-English culture. If an Anglo-English speaker wants another person to do something, they will be likely to be acutely aware of the fact that the person they're speaking to has a right not to comply. The way in which this is likely to manifest as a tendency to limit their use of the bare imperative (i.e.: "pass the salt"). Anglo-English speakers instead have the tendency to use what is called "interrogative-directives" (also called "whimper-imperatives") that encase imperatives in a question, thereby softening the force of the utterance. If the addressee decides to comply with the request, the speaker is required to express gratitude to the individual as an indication of the speaker's acknowledgement of the addressee's personal autonomy. This acknowledgment is required of the Anglo-English speaker even if the addressee obviously would want to comply or is obliged to comply. The Anglo-English speaker is required to package the directive in the form of a request to demonstrate—even in these cases—that they have respect for the audience's personal autonomy, even if it is on a superficial or perfunctory level. The grounding tenet of the rituals surrounding directives in Anglo-English culture is that those issuing directives usually don't want compliance (in most cases) merely out of a sense of obligation (even if they are obliged to comply), especially if it is directly against the will of the addressee. If the audience does comply merely for this reason, where it is *against their own will*, this will offend the Anglo-English speaker's sense of

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<sup>18</sup> Wong (2004): 233.

<sup>19</sup> Ibid.

cultural propriety. Wong states that this is the case, even if the speaker stands to personally benefit from this type of compliance.

In other words, the speaker wants the audience to exercise their individual autonomy, and the audience wants to be respected. The aim, then, for the Anglo-English speaker is to acquire compliance while communicating that their desire is ultimately grounded in respecting the addressee's free exercise of their autonomy. The degree to which the speaker has to be explicit with their communication of this will depend on what is being asked ("pass the salt" versus "give me your kidney"), and who is asking whom (a boss asking an employee, versus the opposite situation). In what follows, I will reproduce each script in turn, that Wong puts forward. Following each script, I will provide an explanation of the script, including how they relate to one another, and how the personal autonomy norms help explain and understand the scripts (and how the Anglo-English speaker should act, according to them).

[A] [people think like this:]  
When I do something, it is good if I do it because I want to do it  
not because someone else wants me to do it.<sup>20</sup>

This script is meant to describe a manner of thinking, generally shared by Anglo-English speakers. This is the preference for doing something because *they want to*, rather than because someone else wants them to do it. Wong points out that this should not keep someone from doing something because another person wants them to do it. Script A merely expresses a preference for doing things (generally) willingly. Simply put, all things being equal, it is on the whole better to do something because you want to do it in Anglo-English culture. Script A provides the foundation on which our other scripts will rest.

[B1] [people think like this:]  
When I want someone to do something  
I don't want this person to think like this:  
Because this person wants me to do it, I can't not [sic] do it.<sup>21</sup>

[B2] [people think like this:]  
When I want someone to do something  
I want this person to know that I think like this:  
This person can, not do it if this person doesn't want to do it.<sup>22 23</sup>

B1 and B2, then have to do with a situation where one person wants another to do something for them. From here, I am going to introduce an example, so it is easier to get a grip on these more complex scripts.

Shelley wants her husband, Mac, to pick up milk on his way home. Mac and Shelley are both Anglo-English speakers.

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<sup>20</sup> Wong (2004): 234.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> On the double negative and awkward phrasing in the last lines of scripts B1 and B2: These scripts have been reproduced exactly as they appear in Wong (2004). Cultural scripts are attempting to describe culturally-relative norms and conventions for analysis, the language of these scripts is in something Wierzbicka (2002) called "non-semantic metalanguage. This metalanguage is meant to represent the most universal concepts, with as neutral language as possible. This also means that the language of cultural scripts is made up of very simple, short words. I will attempt to reproduce this in our later analysis of intra-cultural variations.

Shelley does not want Mac (or anyone else) to do something for her simply because he feels like he has to, now that she has made the request. Both B1 and B2 are grounded in A—if we start with the idea that it’s generally better to do something not just because someone else wants you to do it and combine this with the need to respect other’s personal autonomy (and have your own autonomy respected), we get a desire to not want someone to feel like they have to do as you ask, because you’ve asked them to do it. B1 also sets up a goal for our directives: avoid making the addressee feel like they are being imposed upon. B2, then is in service of this goal: get the person to whom you are speaking to understand that they have the right to refuse to do what you’re asking them to do—especially if it’s against their own will.

Let’s now return to our example. By not wanting Mac (or anyone else for that matter), to pick up the milk because he feels like he has to, Shelley aims for Mac to feel like he has a right to refuse and come straight home. B1 and B2 are what Wong calls “attitudinal scripts”<sup>24</sup>—which then form the background to the next script we will discuss.

[C]     [people think like this:]  
           When I want to say to someone something like this:  
           I want you to do something  
           I think that you will want to do it because of this:  
           It is good if I say something like this at the same time:  
           I don’t say: I know that you will want to do it because of this.<sup>25</sup>

This script, then is a guide for Anglo-English speakers on how to issue a directive. It guides speakers to use the interrogative form when doing so, especially if the directive is non-serious (i.e.: not a matter of life and death). If the directive is something one could reasonably expect another to do willingly (picking up milk on the way home or passing the salt). The script directs speakers to use the interrogative form in order to communicate—within the directive—that there is no presumption of compliance. The first part of the script instructs the speaker on how to go about getting someone to comply with the request. If Shelley wants Mac to pick up the milk, she should tell him this. This desire (Shelley’s) should be enough to be reason-giving for Mac. The interrogative form, then, also communicates that Mac is free to not comply. This is represented by the component “I don’t say: I know that you want to do it because of this.” This instructs speakers to avoid being presumptive, which then guides (indirectly) speakers to the use of the interrogative (as well as requests).

Now, to our final Anglo-English script:

[D]     [people think like this]  
           When I do something, I don’t want someone else to think like this about me:  
           This person can’t not do it because someone else wants this person to do it  
           If someone else thinks like this about me, I will feel something bad.<sup>26</sup>

As already discussed, Wong explains that Anglo-English speakers usually do not want to be imposed upon. This is what Wong is trying to describe in [D]—when they (Anglo-English speakers) put forward non-minor or non-routine requests (those where automatic compliance cannot be reasonably expected—where the addressee can’t be actually expected to want to do).

### *Section 2.3 Singapore English: Interrogatives, Directives and Imperatives*

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<sup>24</sup> Wong (2004): 234.

<sup>25</sup> Ibid.

<sup>26</sup> Wong (2004): 235.

In the next section, I will present a selection of the examples provided by Wong of the use in Singapore English of question tags, interrogative-directives, and requests. I will then present and discuss Wong's observations of both Singapore English and Anglo English, including the suggestions he makes for explaining the differences of cultural norms. I will finish by presenting the scripts articulating these cultural norms before making my own, brief observations and concluding the chapter.

The following examples are from Singaporean literature, the *Coxford Singlish Dictionary*, and questions asked of public servants and employees. They are interrogative-directives, requests and imperatives. The examples 1b-2g are examples of the auxiliary 'can'. This, and the "can or not" formulation in 3a and 3b are the most common forms used by Singapore English speakers.

1b. Sis, have you rented cars before? Can you rent one? (Kist, 1992: 162)

2b. Can you please let me know how to get to the nearest post office?

2c. Can you spare me two pieces of paper?

2g. Can I know where the washroom is, please?<sup>27</sup>

3a. Today after school follow me go downtown, can or not?<sup>28</sup>

3b. Eh, borrow me five dollars today, tomorrow I return you, can or not?<sup>29</sup>

The "can or not" formulation suggests Wong (as well as Tongue 1974: 115), is from a Chinese expression that means roughly the same thing as "can you or can you not". Both the "can or not" and the auxiliary "can" are what is called "can interrogatives".

The next set of examples are from a service by the National Reference Library of Singapore (people can pose questions to reference librarians who will email them back), and from actual conversations (there's no other context given for the second set other than that they are requests).

4b. Famous pioneers in Singapore whose names are used for names of road.

4e. Parenting law for genetic information

4f. I am conducting a project about the life story about Catherine Lim, the author. Her autobiography, contributions to society besides her literary works. Her date of birth, her country origin, education, background, personality, family, etc.

4g. Prevent loss of vitamins, RDA, food pyramid, S'pore [sic] dietary guidelines, oxidation.<sup>30</sup>

5f. Switch off the lights.

5g. The ginger you cut into small pieces.

5i. You write your mobile phone here.

5j. Don't wash now.<sup>31</sup>

The final set of examples are common formulations of tag-questions, which are parts of speech that are added to a statement to turn it into a question. These examples are from Brown (1999), Tongue (1974), and Wong (2004), in that order.

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<sup>27</sup> Wong (2004): 235.

<sup>28</sup> This alternative form is what linguist, Ray Tongue (1974) calls, "Can or not?"<sup>28</sup> These examples are from *The Oxford Singlish Dictionary* (2002: 22).22).

<sup>29</sup> Wong (2004): 235; *The Oxford Singlish Dictionary* (2002): 22.

<sup>30</sup> Wong (2004): 236-237.

<sup>31</sup> Wong (2004): 237.

- 8d. You're not selling your lovely car, is it?
- 8f. *Customer*: I want it at six o'clock. *Grocer*: At six o'clock, is it? *Customer*: And I also want two katis of chillies. *Grocer*: Two katis, is it? *Customer*: Fresh, not dry. *Grocer*: Fresh, is it?
- 9a. \*She's a pretty girl, is it?
- 9b. \*Singapore is a beautiful city, is it?<sup>32</sup>
- 10a. Cockroach not lunch wut.
- 10b. But you are [good looking] wut.
- 10c. He is quite hopeless with kids one.
- 10d. They don't know when to stop [drinking] one.

In 8d, 8f, 9a and 9b, we see the use of the tag question "is it?" Unlike the Anglo-English equivalent, which may be often used to soften a statement of fact that the speaker knows is the case, Singapore English speakers use these tags to confirm a fact of the matter. In the Singapore English context, there will be no such use of the "is/isn't it" tag. If there is a tag on the end of a statement of opinion, in Singapore English it typically takes the form we see in 10a-10d: "wut" and "one". These tags are not used to confirm as state of fact, but instead are used to "tell others what to think".<sup>33</sup> In other words, they are used to demonstrate that the speaker is strongly and forcefully trying to contradict what one has said and/or insisting that they adopt your position.<sup>34</sup>

They are simple particles that turn out to be quite important to the normal running of a Singapore-English conversation if you're trying to be polite as we will see later. As is evidenced here, and as Wong points out, interrogative directives are present in Singapore English though they are used less often and, "employ a smaller range of alternative formulas,"<sup>35</sup> than their Anglo counterparts. Additionally, the use of "can or not" or the auxiliary "can" seem to suggest that the Singapore English speaker is far more interested in the addressee's ability to perform the task, than whether or not they want to do it. There is also an implicit assumption that goes with this practical concern—that the audience is expected to do as they are asked, even if this is out of sheer obligation. As we will see in many of our examples, the individual desire seems not to be a major concern for the Singapore English speaker.

The interrogative-directive in Singapore English functions as a practical tool to find out the ability of the addressee. For example, in 1b, the concern is whether or not the addressee is legally able to rent a car and if they know how to do so. There is little consideration for what the individual wants, which Wong points out, seems to not be a core Singaporean value.<sup>36</sup> In the examples 4c-4g, we see the way Singapore English speakers make requests that further reflects the lack of cultural importance of individual autonomy. In these requests, it is taken for granted that the librarians will comply, and there's a distinct absence of any overt acknowledgement of personal autonomy—both of which Wong says is evidenced by the lack of any indication that the speech acts were requests, other than the context. More or less, each speaker states the topic, and the information about the topic that they are looking for.

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<sup>32</sup> Wong (2004): 242.

<sup>33</sup> Wong (2004): 243.

<sup>34</sup> The "wut" and "one" formulations come from Chinese languages, though which Chinese languages are not specified by Wong. Additionally, no translations or meanings other than what is discussed could be located.

<sup>35</sup> Wong (2004): 235.

<sup>36</sup> Hwee Hwee Tan points this out: "It's like all my life I've been so focused on what I *should* be doing. I don't even know what I really want. For the first time in my life I've found something that makes *me* not my parents happy." (Tan 2002: 214)



This form of request is not limited to what Wong calls “service-provider oriented speech”, which is what examples 5f-5j are meant to demonstrate. These examples are from every day unmarked language use and are meant to indicate that there is a widespread preference for using imperatives over interrogative-directives. Wong states that, “On the basis of evidence from everyday language use, it seems clear that Singaporeans place far less emphasis on personal autonomy than their Anglo counterparts.”<sup>37</sup>

The norm in Singapore English is to use the imperative, which leaves the addressee little-to-no room to amicably refuse.<sup>38</sup> When the interrogative-directive is used in Singapore English, the question is not aimed at finding out if the addressee wants to do it, if it is convenient for them, or if they have other things to do—rather it is aimed at finding out the capacities of the audience. The interrogative directive in Singapore English is a practical tool to gauge whether or not they need to find someone else to ask, or if the audience are capable. This is opposed to the Anglo form that seeks to soften the speech act by letting the audience know that their own will and desires are being respected, and that though compliance is desired (or, even expected), it is not assumed. Asking someone to do something seems to violate, per se, the norm of not imposing on others. It seems that the interrogative-directive in Anglo culture helps to mitigate this violation and provide the addressee with an opportunity to gracefully (more or less) refuse<sup>39</sup>—it is in this way that it is a relationship management tool. The Singapore-English imperative, on the other hand, gives the addressee no such opportunity. This is not to say that the addressee cannot refuse—I merely mean to suggest that the procedure for refusal undermines a core normative assumption and may be seen as procedurally atypical.

I will now move to look at the use of question tags. Question tags, as previously stated, are declarative statement or imperative is made into a question by adding an interrogative fragment called a tag or a tail. (They are also called “tail questions”.) Like interrogative-directives, Anglo-English speakers and Singapore English speakers use question tags differently. In what follows, I will briefly outline what Wong has to say about Anglo and Singapore question tags. We will then move to discussing Wong’s scripts and cross-cultural communication.

Wong claims that there is a link between the view that people are autonomous individuals and the value of independent thinking. Independently generated points of view are highly valued in Anglo culture, which leads to the prevalence of the use of tag questions. If we look at 7b-7d, we can see how the tag questions help soften the statement or imperative. The idea here is that there is a “deep-rooted habit of acknowledging possible differences between individual points of view.”<sup>40</sup> If, for example, I state an opinion and use a question tag, I am acknowledging you might not share this opinion and I don’t want to appear to force my views on you.

Examples eight to ten, show us how question-tags are used in Singapore English. Like interrogative-directives, there are a smaller range of varieties, and are much more simplified. In Anglo-English, tags function to soften speech acts and their form depends on the context and grammar of the statement. However, Singapore English speakers primarily use the “is it?” and “isn’t it?” They also use particles as tags when stating opinions. In both cases, the tags are used to seek confirmation of fact. The particles are also meant to emphasize that the audience should accept the opinion as fact. This particular example can

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<sup>37</sup> Wong (2004): 237.

<sup>38</sup> This is not stated explicitly by Wong but seems to follow from the assumption that if someone can do it, they will do it regardless of whether or not they want to. This seems to leave little room to refuse for any other reason than you are literally incapable of complying with the request.

<sup>39</sup> This is not to say that the Singapore English forms are not themselves ways to manage relationships, but it seems that this seems to be more overtly of concern in the interrogative-directives.

<sup>40</sup> Wong (2004): 239.

be seen in 10a-10d, with the tags “wut” and “one”. Without these particles, everyday informal speech would sound formal, stilted and impersonal.<sup>41</sup>

The Singapore English way of speaking, Wong explains, has to do with the way respect is codified in a Singaporean context. Unlike many other languages (and cultures) that dictate a degree of formality for those one doesn’t know (or doesn’t know well), Singapore English speakers prefer to adopt informal and familiar ways of speaking. “Wut” and “one”—as has already been stated, are used to forcefully try to bring your addressee to adopt your belief or opinion. In Anglo English, such an act is typically used when speaking to someone that is already familiar with the speaker and whom they know won’t take such an attempt as offensive. Such rousing discussions and arguments are found in both contexts of course, but Singapore English speakers use familiar forms of speech to signal friendliness and openness. Rather than taking a formal approach to strangers or acquaintances to demonstrate respect, Singapore English speakers will adopt informal and familiar language practices to signal warmth and friendliness. Wong emphasises this point by stating that a failure to forcefully convince another person of your own viewpoint may be taken as, “hinting that he or she is not keen on interacting with the addressee at a more personal level and that the addressee is not someone with whom he or she wants to be on particularly intimate terms.”<sup>42</sup>

This is in contrast to Anglo-English norms. It seems that in both cases, Anglo and Singapore-English tag questions function to communicate respect. The difference, however, is in the precise manner the speaker goes about signalling respect. Anglo-English speakers follow norms that dictate one should not assume a level of intimacy nor be seen as imposing their opinions onto others—both of which can be seen as functioning in line with the need to respect others’ autonomy. I will now move on to Wong’s discussion of the backgrounds of each culture—particularly Singaporean culture. Singapore culture is made up of a large population of Chinese people—with smaller groups of Malay and Indian people. According to Wong, these are largely group-oriented cultures that places a very low importance on personal autonomy. Wong claims that there is no equivalent Chinese word for “privacy”. In speaking with mainland Chinese residents, there was a distinct sense that unity in the family was very important. Parents, for example, or others that may be in charge of other people, are often entitled to read diaries and the like to find out if anything is wrong. Though this seems to support Wong’s claim that, “the individual exists or is someone only when he or she is a member of a group.”<sup>43</sup>—I am concerned with how strong, and seemingly over-general it is, a general point of criticism to which we will attend in the next chapter. As a group-oriented culture, there tends to be some difficulty differentiating the individual from the group. In other words, in Singapore culture, which shares so much with Chinese culture, the family is the basic unit of society (as opposed to the individual). This has the result of diminishing further the value of personal autonomy in this context. Wong concludes that Singapore English speakers seem to be much more interested in what a person can or cannot do, rather than if the person (as an autonomous individual) wants to do it. From these observations, Wong generates the following scripts:

[E1] [people think like this:]

When I say to someone about something “I want you to do it.”

I can think about it like this:

If this person can do it, this person will do it.

[E2] [people think like this:]

When someone says to me about something “I want you to do it”

If I can do it, it is good if I do it.<sup>44</sup>

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<sup>41</sup> Wong (2004): 243.

<sup>42</sup> Wong (2004): 244.

<sup>43</sup> Wong (2004): 239.

<sup>44</sup> Ibid.

These scripts are meant to describe what Wong calls, “a kind of obligatory attitude”<sup>45</sup> that Singapore English speakers feel between one another (especially between close friends and family) to do things for one another, if and when they’re able regardless of whether or not they would like to. This as we see in E1 and E2 is a norm that runs both ways. I will help you any time I can and expect you to do the same. This isn’t the case in the Anglo English context. There may be a commitment to E2, however the value of personal autonomy is so great that script B2 and D shifts things to the following: *when I need your help, I want you to know that you’re free to refuse (B2), and that when I help you, I’m doing it because I want to and not merely because I must (D)*.<sup>46</sup> It is not enough to help, we have to be happy to help—in other words. However, because Singapore English speakers hold the family and not the individual as the basic social unit, it seems that the autonomy of the group is what’s at issue. Singapore English speakers don’t view requests as posing a threat to a key cultural value. It is in fact the opposite—to not make such requests of others seems to be in opposition to the core value of family and group autonomy.

On the view of the Anglo-English speaker a Singaporean request might seem unacceptably imposing or forceful and it could seem that the addressee is obliging and does not exercise personal autonomy. The result may be in these cases that the Anglo speaker views Singaporean speakers as rude, overbearing, and so on—the uptake given by the speaker here will be that of a powerful directive or command and may seem unacceptably imposing.

The next scripts Wong discusses are those articulating Anglo-English tag questions. Examples 7b-7d demonstrate the use of these tags to communicate the awareness of alternative points of view previously discussed.

- 7b. Tomorrow morning I have to go to Belconnen to pick up a parcel, so I may not see you at the gym either. It seems to be a week of “not being able to catch up”, doesn’t it?
- 7c. Generally speaking, most people are self-absorbed. I guess we just have to accept this, don’t we? Then we can appreciate fully the acts of kindness that do occur occasionally.
- 7d. Remember me? It has been a, while hasn’t it?

The first script (below) is meant to articulate the recognition that everyone is an independent thinking, capable of forming their own thoughts or opinions.

[F1] [people think like this:]

When I want to say to someone about something “I think about it like this”

It is good to think about the person like this:

This person is not me

This person can think about it in another way<sup>47</sup>

In other words, F1 is meant to articulate that it’s appropriate to signal to them that there may be a difference in opinion. F2, then, is meant to articulate how a speaker may go about communicating this (F1)—that Anglo English speakers can express this via the use of the interrogative form (and question tags).

[F2] if I think that this person thinks about it in the same way it is good to say something like this at the same time:

I think that you think about it like this.

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<sup>45</sup> Ibid.

<sup>46</sup> Wong (2004): 234-235.

<sup>47</sup> Wong (2004): 241.

I don't say: I know it.  
I want to know  
Because of this, I think you will say something about it to me now<sup>48</sup>

The scripts F1 and F2 show us that question tags in Anglo English reflect a core cultural value, that everyone should practice autonomous, independent and critical thinking. Wong states that we can see further evidence in expressions such as “keep an open mind”, and “let's agree to disagree.” This is so highly valued, claims Wong that Anglo speakers are not likely to accept other people's views without question. Wong articulates these particular cultural attitudes that underlie the Anglo English use of question tags.

[G1] [people think like this:]  
when a person thinks something about something  
it is not good if this person thinks like this because someone else  
thinks about it like this<sup>49</sup>

G1 specifically address the idea that Anglo English culture values independence in thinking.

[G2] [people think like this:]  
When I say something to someone about something “I think about it like this.”  
It is good to say something like this at the same time:  
I know that you can think about it in another way.<sup>50</sup>

G1 and G2 are meant to provide the grounding attitudes and initial procedures for articulating an opinion. F1 tells us how to think about other people, and F2 tells us that even if I think you share my opinion, I still will need to let you know that I might be wrong, and that you can disagree. Communicating an opinion in Anglo English is complicated by the strength of the status of personal autonomy.

I want to briefly pause here to note that these scripts seem to be making sweeping generalizations about Anglo English and Singapore English culture. It is not difficult to think of counter-examples. It may also be that these scripts are relative to social position, gender, class, etc.—all of which limit what amount of respect we owe someone, and how we interact with them. (And indeed, variations like this will be very important later in this dissertation.)

While Anglo English speakers don't want to seem to be imposing their view on another person (which there is why a disclaimer is added, including questions tags), Singapore English speakers use the tag questions “is it?” and “isn't it?” primarily, as we see in 8d and 8f. These are used similarly to the way interrogative-directives are used—namely as pragmatic tools to confirm fact (or, as the case of interrogative-directives, to gauge ability). The Anglo English use of “is/isn't it” tag, by contrast is much more selectively, and though it is also used to confirm facts, it is also used to soften declaratives (see examples 9a and 9b).

Singapore English puts far less importance on acknowledging the possibility of differences of opinion. Wong suggests that the Singapore English speaker, “often sounds like he or she is stating a fact that

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<sup>48</sup> Ibid.

<sup>49</sup> Wong (2004): 242.

<sup>50</sup> Ibid.

everyone else should accept as unquestionable.”<sup>51</sup> The also attempt to influence others’ (the addressee’s opinion unquestionably and feel no need to consider that they might think differently).<sup>52</sup>

The other kind of tag used by Singapore English speakers is a selection of simple particles—seen in 10a-10d—that originate in Chinese languages. These include the particle “wut” and “one”—and function to influence others. As previously noted this is meant to indicate respect and intimacy. Gupta (1992) describes the use of particles in Singapore English speaking children. She states that the use of such particles allows them to, “participate forcefully and successfully in arguments.”<sup>53</sup> She also writes (1994:10) that in some cases the particles are used to forcefully contradict something already said. This speech behavior, Wong points out, is atypical of Anglo speakers to avoid overtly influencing others. Singapore English speakers use particles as tags in informal contexts to signal closeness or warmth. Wong articulates these Singapore English norms in the following script:

[H] [people think like this]  
If I think about someone like this:  
I know this person well; I feel something good when I am with this person.  
When I say to this person about something “I think about it like this.”  
It is good to say something like this at the same time:  
“I want you to think about it like this.”<sup>54</sup>

This script encourages speakers in the Singapore English culture to persistently attempt to impact others’ line of thinking. In other words, if I like you, I feel comfortable with telling you what I think and that you should agree with me. This mode of interaction is what Singapore English speakers are most comfortable with and prefer. It is a way of interacting with someone that indicates they would like to interact with on a more personal level.

Singapore and Anglo English speakers are both said to speak English and are both said to speak native forms of English. Singapore English speakers prefer to express opinions in a way that is overtly influential, while Anglo English speakers actively avoid overtly influencing others. As a result, it is easy to see how cross-cultural communication might go awry if the participants aren’t aware of the other cultural norms. Anglo English speakers may see Singapore English speakers as overbearing and rude, while Singapore English might see Anglo English speakers as distant, cold or unfriendly.

## Conclusion

In this chapter, we explored one possible way in which to explain and understand some of the mechanics of illocutionary deafening (among other, unjust, pragmatic breakdowns). We looked at a methodology developed by sociolinguists to articulate cultural norms. The goal of these scripts is to provide a way in which to articulate norms of behavior (linguistic or otherwise), in a way that was both easily understandable to the cultural outsider, and yet easily recognizable to the insider. We started by discussing the basics of using cultural scripts, which created space in which we were able to see how such a tool would be useful in describing and understanding in-group variation, and the ways in which norms and values shift depending on the participants beliefs about their conversational partners. We also looked at a case study in which Jock Onn Wong (2004) analyzed the difference between Anglo-English and

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<sup>51</sup> Wong (2004): 243.

<sup>52</sup> Ibid.

<sup>53</sup> Gupta, A. F. (1994) *The Step-Tongue: Children’s English in Singapore*. Clevedon: Multilingual Matters.

<sup>54</sup> Wong (2004): 243-44.

Singapore-English speakers' preferred ways to issue directives and requests. This analysis was of particular interest to our current task, as we will see in the next chapter. Much is made of gender differences and their effect on requests and directives, and four of the authors we will discuss next use this example in some way to talk about identity and pragmatic dysfunction. Where cultural scripts will be of use to us, is in developing a way to understand how the exact same words uttered in the exact same context, by people who only differ in their social identity, can be understood to not only be performing different speech acts (in the illocutionary sense), but also find themselves in a much different position, relative to their interlocutors.<sup>55</sup>

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<sup>55</sup> We will discuss this in greater detail in chapter five.

## Chapter Five

### *Intra-Cultural Variation in Scripts: Positioning, Scripts and Discursive Injustice*

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#### Introduction

One major observation can be made when looking at the use of scripts as we have observed in chapter four: it seems that despite the goal of making linguistic analysis more precise and fine-grained, Wong at least seems to make some very broad generalizations in his observations of Anglo-English and Singapore-English culture. In this chapter, I will discuss these generalizations in more detail and introduce a few more linguistic concepts that will allow us to understand how scripts and cultural norms vary within a single cultural context. This will allow me to bring together our analysis of speech act theory and identity-based silencing together with cultural scripts.

I will start by discussing Wong's 2004 work, dealing primarily with the possibility of intra-cultural variation and social norms. Though the generalization present in Wong may not be a necessary feature of the theoretical use of scripts, it certainly seems to be a common feature in Wong (2004) and the work he cites, and as a result, it merits analysis. In particular, it seems that Wong fails to acknowledge the difference in Anglo-English cultural norms around autonomy between those with different amounts of social and political power. To help in understanding and addressing this issue, I will introduce work by Deborah Cameron (1997), among others, that introduce elements such as positioning that allow us to articulate the interaction between assumptions regarding the relevant cultural norms and scripts, as well as the speaker and audience's perceptions regarding each other's social position.

I will then outline work by Rebecca Kukla, who widens the scope of Langton's analysis. Kukla is particularly interested in situations where failure of uptake further enhances already disadvantaged social positions of speakers. I will then shift to discussing the issue of generalization within Wong's application of cultural scripts. In the final section of this chapter I will bring together what I have discussed in chapter four and what I have already outlined in the current chapter to put forward a sketch of precisely what might be going on when speakers are unable to be understood by their audiences, when the culpability for the misunderstanding rests with the audience. I will call this

phenomenon “illocutionary deafening”<sup>1</sup>, which I take to be part of a larger category of linguistic injustice.<sup>2</sup>

There is one major issue with the cultural script literature that we have reviewed in the previous chapter: there doesn’t seem to be much consideration for the differences in norms, within a culture. Perhaps in a well-functioning society we might in fact say that our cultural guidelines for behaviour should apply to everyone equally. For example, if like the Anglo-English speaker, there is a requirement to indicate acknowledgement of other’s personal autonomy, it might be reasonable to assume that everyone deserves such recognition. (Perhaps this is especially the case if personal autonomy is a core cultural value.) However, it seems that at least in the Anglo-English context (and I believe in the Singapore-English context as well) this is not in fact the case. Even if culturally there is a belief that these rules apply fairly to everyone in the culture, this is likely not the case. It seems unlikely that it is equally acceptable for a teenager to read the diary of their parents in Singapore English culture as it is for a parent to read the diary of their teenager. My aim here is to look at the intra-cultural variations of norms within scripts. In doing so, I will use several questions to guide the discussion:

- 1) What if explicit cultural norms of behaviour conflict with: implicit cultural norms, other explicit cultural norms, or unconscious cultural expectations?
- 2) What if your subject position (the standpoint or role you adopt through language use) conflicts with subject position your addressee attributes to you?

I will begin by interrogating two of the scripts proposed by Wong to explore how identity (other than cultural belonging indicated in the original work) might change what norms are in play. As I do this, I will introduce concepts from Cameron (1997) and Eckert and McConnell-Ginet (2013), that will help to chart the relationships between speaker and audience that takes into account interpretive schemas, norms of behaviour and the way conversational participants place themselves in relationship to each other. I will start with the idea of frames (interpretive schemes that we broadly apply to interactions), scripts (descriptions of norms of behaviour), stance (attitudes or positions that a person takes in the conversation), positioning (the way we orient ourselves to ideas, beliefs, attitudes, and/or individuals), and indexicality (the way we inhabit particular stances or positions). I will explore these elements in more detail and sketch a way to use cultural scripts in order to understand what tools and baggage the participants bring to the interaction.

### **Section One: Interrogating Cultural Scripts**

The scripts literature discussed in chapter four is part of a sub-discipline of sociolinguistics called “intercultural pragmatics”. Intercultural pragmatics is concerned with studying variations of language use across different cultural contexts. The main gambit of intercultural pragmatics is that since language use and culture are shaped by one another, comparing variations between two or more contexts will generate useful insights and deepen our understanding of both. The downside of this, of

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<sup>1</sup> It should be noted that though it is unfortunate that this term casts deafness as an inability to understand, this is the best term I’ve been able to come up with thus far. I have decided to use this phrase, in order to indicate an instance where the audience is rendered unable to hear the illocutionary act—where, to the audience, it might as well have not been performed at all (until I can find a more suitable term to replace it). Additionally, it seems to be the most natural term, since the literature already is framed in terms of ‘silencing’—though I am aware of the problems and would like to find a better one.

<sup>2</sup> This is merely meant to encapsulate that category of injustices that occur through, or because of language. It is not meant to denote anything more specific and is used to distinguish it from Kukla’s *discursive injustice*.



course is that some of the nuances of language use *within* a single cultural context may fall by the wayside or become lost in the process. For the sake of practicality, some generalizations have to be made. However, as Anne Barron and Klaus Schneider point out, these generalizations either (1) create the illusion that there is a one-to-one relationship between language use and culture, or (2) miss the impact that other social factors may have on cultural norms as well as on language use.<sup>3</sup> As we will see later on in this section, there is a complex matrix of factors that influence both the norms of language use and the cultural perceptions of these norms.

In what follows, I will raise an issue that is specific to Wong's (2004) analysis of Anglo-English and Singapore-English personal autonomy norms. Specifically, I will argue that the category, "Anglo-English" is a not very helpful one since it both rules speakers out that one may want to include, while at the same time putting together speakers from a wide range of distinct linguistic communities that, at the very least, differ from one another in some culturally significant ways. Following this, I will propose a modified category that will help in analyzing the strengths and weaknesses of using cultural scripts to understand miscommunication between groups of varying levels of social power. Specifically, I will address the fact that the perlocutionary goals of the speaker, and their conversational role, heavily determine what locutionary act is chosen as well as the performative force of the utterance in question. To better understand this, I will present Deborah Cameron's critique of Robin Lakoff's "Women's Language" as well as Penelope Eckert and Sally McConnell-Ginet's work on the subject. The work of all three linguists provide the tools needed, not only to better understand claims made about intercultural variation, but also to develop an understanding of some kinds of intracultural miscommunications.

### *Section 1.1 Generalizations*

#### *Section 1.2.1 Critique*

In what follows I will do two things; propose a better category for analysis and discuss the wider danger of overgeneralisation that we see in Wong. Because Wong is comparing two cultures, there is an amount of generalization that is (in practice) inevitable, if not necessary. As we have touched on briefly, though not everyone in a given cultural context needs to subscribe or endorse the norms and values they describe, they should be, at some level, aware of them. Where Wong's analysis falls short, is in the how these norms vary according to in-group makers of difference, such as: age, gender, skin tone, socio-economic class and so on. In what follows we will look at some fundamental tools used by sociolinguists writing on gender, that may help understand how these factors shape the range of possible speech acts a person can be understood as performing.

In their book, "Language and Gender" Eckert and McConnell-Ginet point out that stereotypes are more than just harmful half-truths about different groups of people. They propose that stereotypes help to shape cultural norms and helps form what they call an "ideological map" that sets out a range of possible behaviours. Their main point here is that stereotypes do have a fairly significant impact on how we situate ourselves and others. This is part of why cultural scripts are helpful when considering shared norms of linguistic behaviour.

Stereotypes, of course, can be (and frequently are) harmful and serve to paste over differences within a group.<sup>4</sup> Similarly, cultural scripts may be subject to a similar problem. In trying to find differences between cultures, we may ignore or miss the differences within a single culture and as such, they may

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<sup>3</sup> Barron, A and Schneider, K. (2009) "Variational Pragmatics: Studying the Impact of Social Factors on Language Use in Interaction." *Intercultural Pragmatics*. Vol. 6-4. 425-443.

<sup>4</sup> They also, of course, may downplay or ignore similarities across groups.

allow important nuances of language use to fall by the wayside. In what follows I will look at a few issues of generality that Wong (2004), doesn't take into account: 1) cultural norms regarding the speaker's and addressee's memberships in particular groups; 2) the role each person takes in the conversation (facilitator, addressee, etc.), and finally, 3) what the speakers are attempting to accomplish with their words.

Though Wong restricts his claims to a specific community of language speakers, within its own cultural and geographical context, it still seems as though the norms of personal autonomy may be not sensitive enough to the various hierarchies that fall along class, race, gender, lines (among others). This usually means that those with more relative social power are not usually required to go out of their way to communicate their recognition of the others autonomy, to those with relatively less power. This is not to say that Wong's analysis misses any of these issues. And, in fact, some of the history of the people who settled in Singapore and their origins help understand the difference in some values. This issue arises, however, when information about hierarchies and social power are not attended to, at least in part.<sup>5</sup>

### Section 1.2.2 Sociolinguistic Tools

Sally McConnell-Ginet (2004), while writing on Robin Lakoff's ground-breaking work *Language and Woman's Place*<sup>6</sup> notes that Lakoff's (1975) aim was to point to the links between the ideology of language and the ideology of gender. She states that Lakoff was, "Crucially...drawing attention to some ways in which women's apparently problematic status as speakers contributed to their overall social disadvantage, including their subordination to men."<sup>7</sup> Lakoff (1975) does this by pointing to various ways in which women seem to use language differently from men. It is McConnell-Ginet's (2004) commentary on Lakoff (1975) that I am most interested in, for our current purposes. Specifically, the way in which McConnell-Ginet describes the complicated relationship between the tools of language, the content of our speech and our beliefs or ideas about ourselves and the people to whom we are speaking.

It will be helpful first to look at the "characteristically female" ways of speaking that Lakoff points to in her 1975 work, as helpfully and succinctly outlined by McConnell-Ginet. This may include an elaborated colour vocabulary (not just "pink", but "mauve," "magenta," and so on), diminutives ("panties" instead of "underwear" or "underpants")<sup>8</sup>, euphemisms (substitutions for explicit language or phrases, such as "good grief" instead of "Jesus fucking Christ"), and a tendency to use "superpolite [sic] style of speech."<sup>9</sup> Women's language (as Lakoff terms it) also tends to include:

- Tag questions: "You should wear a jacket, **don't you think?**"
- Various kinds of hedges: "**It seems like** we **might** be running late." Vs. "We're running late."
- "Empty boosters"<sup>10</sup>: "I am **so**, happy you made it!" or "You did **really** well today."

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<sup>5</sup> As we will see in section two, the conventions for directives in a Western, English context, vary significantly depending on the gender of the speaker.

<sup>6</sup> Lakoff, R. (1975) *Language and Woman's Place*. New York: Harper & Row.

<sup>7</sup> McConnell-Ginet, Sally (2004) "Positioning ideas and gendered subjects: "Woman's Language" revisited". In: Mary Bucholtz (ed.) *Language and Woman's Place: Text and Commentaries*, by Robin Tolmach Lakoff, 137. Oxford: OUP.

<sup>8</sup> McConnell-Ginet (2004): 137.

<sup>9</sup> McConnell-Ginet (2004): 137; in other words, being overly respectful in some manner, whether it is by employing more standard speech forms in casual conversation or communicating respect for someone you might not typically be required to, given other facts about the context.

<sup>10</sup> McConnell-Ginet (2004): 137.

- Using tonal accents: “I’d prefer to eat at home?” vs. “I’d prefer to eat at home.”
- Indirection: “I had pizza yesterday.” (As a response to: “What do you want to have for dinner tonight?” vs. “Let’s go for Dosas at Mavelli’s.”)<sup>11</sup>

McConnell-Ginet’s (2004) point in listing these tools is to point out that Lakoff presents to us a “range of linguistics resources” that any user of the language can draw upon. However, often it is the case that these tools are used to *position* the speaker relative to the content of the utterance.<sup>12</sup> This is called *idea positioning*. Let’s look at the example: “It seems like we might be running late.” Here hedging words and phrases (“it seems like” and “might”) are used to communicate the relationship between the speaker and the content of the utterance. Perhaps she very well knows that they are going to be late because the bus they needed to catch is always 15 minutes late, and probably won’t make that time up at any other point in the journey. Our speaker may still use hedges because she doesn’t want to make her travelling partner any more nervous than is necessary (and perhaps, she still hopes that she is wrong, for the sake of her interlocutor). Such linguistic tools may be used to signal the degree of commitment to the content expressed (as has been demonstrated in practice in countless places in this and previous chapters). They may also be used to establish the degree of interest, involvement, or (non)seriousness the speaker bears to the content of the utterance.<sup>13</sup>

On its own idea positioning is not particularly relevant to our present work. However, when idea positioning helps us to identify *subject positions* it becomes not just useful, but relevant as well. As already stated, the markers of “women’s language” that Lakoff (1975) and McConnell-Ginet (2004) articulate, can (and likely are) used by many speakers. It is when we look at what these markers communicate to us about the relationship women present themselves as having with the content of their speech that we see a link between the way in which speakers and audiences are positioning themselves relative to one another.<sup>14</sup> McConnell-Ginet (2004) states that:

Women’s language...had the effect of undercutting the positions that women might be trying to take. Even features such as euphemisms and politeness particles, while not obviously markers of idea positioning, could often be interpreted as diminishing the force of what is said, rendering it powerless.<sup>15</sup>

The features that Lakoff (1975) describes as typical features of women’s language are often used to distance or minimize what is said. She cites a study done in 1980 on courtroom testimony and perceptions of credibility that showed that features of language such as hedging, tag questions and so on, were statistically associated more with having less power generally (as opposed to “being a woman”). Speech with these features was taken by the participants to generally seem to weaken the credibility of what the speaker was saying.<sup>16</sup> This relationship tells us something not insignificant about the speakers. It tells us that the speaker is positioning themselves as having relatively little power. *Subject positioning* is the practice of adopting certain positions relative to another person. When we speak, we attribute subject positions to ourselves and others. We may, for example, talk

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<sup>11</sup> Lakoff (1975) and McConnell-Ginet (2004) both point to the fact that women tend to not communicate directly about what they need or want.

<sup>12</sup> McConnell-Ginet (2004): 137.

<sup>13</sup> Ibid.

<sup>14</sup> McConnell-Ginet (2004): 140.

<sup>15</sup> McConnell-Ginet (2004): 138.

<sup>16</sup> O’Barr, William M., & Bowman K. Atkins (1980). “Women’s language” or “powerless language”? In Sally McConnell-Ginet, Ruth Borker, & Nelly Furman (eds.), *Women and language in literature and society*. New York: Praeger. 93--110. As cited in McConnell-Ginet (2004): 138.

down to a child who asks what happened to the goldfish that's been flushed down the toilet. We may defer to expert opinion, when considering surgery, and so on. We can intend to position ourselves in certain ways relative to our beliefs about the person to whom we are speaking, and in fact come across as adopting another position. We generally adopt positions by employing linguistic tools (such as hedging and so on). These linguistic tools both communicate our idea position (the relationship we have to the content of what we are communicating), which itself communicates our subject position ("I am the expert here" or "I am unsure of myself"). Since the features listed as characteristic of women's language tend to reduce the force of the speaker's contribution to the discourse, this tells us that the speaker takes themselves as—at minimum—less significant to the conversation. The point that McConnell-Ginet is trying to make here is that these markers are not themselves feminine, but because women de-facto have less social power than men, and are taken as such, they usually adopt speech practices that minimize or diminish the force of their utterances. There are two terms that will be helpful to know here, as well as in what follows. An idea position is the relationship the speaker has with regards to the content of their utterances. This can also be called "stance" or a "direct index". Subject positioning (or **indirect indexing**) is the relationship or position you adopt as a result of your stance, or relationship you adopt to your speech. For example, hedging or softening one's assertions as a linguistic behavior can be indexed directly as a general lack of confidence in what someone is asserting—this is the stance the speaker is taking with regards the content of the utterance.

One very important thing to note about gender and language research, specifically regarding the linguistic habits of men and women, is that in actual fact, very few of the studies that were conducted after Lakoff's work found that there are many significant differences between the frequency of men and women using "features of women's language".<sup>17</sup> Both Cameron (2007), and Eckert and McConnell-Ginet (2003 and 2013) point out that one huge issue with this research is that the same linguistic form can be used for a variety of reasons, and that they also can be fulfilling several functions at once. These tools—what Eckert and McConnell-Ginet (2003) call "positioning devices"—often have many different purposes that may be co-occurring.<sup>18</sup> On top of this, how the speaker and addressee interpret the function of such devices or other linguistic forms will frequently depend on the interaction between complex relationships and norms of behaviour that (as we have seen in previous chapters, and discuss in section two of this chapter), vary according to your social status, race, gender, and the like. Eckert and McConnell-Ginet point this out in the following passage, which follows a brief discussion on profanity and gender:

Women's anger is often repositioned as frustration or emotional "upset," framed as non-threatening and, indeed as rendering its subject vulnerable. Women's increased use of obscene language in expressing anger can represent a repositioning that challenges male dominance and that claims authority. Of course, whether such a repositioning is indeed accomplished depends on many factors.<sup>19</sup>

This section is preceded by a brief discussion of profanity and anger. Their point here is that profanity, as well as shouting and abusive insults<sup>20</sup> are part and parcel of expressing anger. Anger itself is an emotion that they state is, "the emotion most expected and tolerated (in some contexts even encouraged) from men."<sup>21</sup> Women, of course, are not given access to profanity or strong language

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<sup>17</sup> Eckert and McConnell-Ginet (2003): 159; Cameron (2007): 14.

<sup>18</sup> Eckert and McConnell-Ginet: 184.

<sup>19</sup> Eckert and McConnell-Ginet: 182.

<sup>20</sup> Ibid; their phrase.

<sup>21</sup> Ibid.

(though the use of such language is on the rise<sup>22</sup>), in quite the same ways as men. Eckert and McConnell point to the fact that both men and women often report feeling uncomfortable when hearing women swear. What the above quote illustrates, then, is that women need to express anger, but when they do it either through profanity or euphemisms, they are at risk of being seen as “cute”<sup>23</sup> or as deficient women. Cameron (2007) points to a reality television show as example of the latter: *From Ladette to Lady*.<sup>24</sup> In this television show, a group of working class women are sent to the prestigious finishing school, Eggleston Hall. They were trained in five core skills: deportment, elocution, flower arranging, etiquette and cookery. If the women did not manage to meet the standards set by the school instructors (and, of course, by British culture *of a certain class*, more widely), they would be eliminated from the show (with one participant going home at the end of the episode).

The women in this programme did not conform to a significant set of British cultural norms with regard to “how to be a ‘good’ woman”. However, they did adhere to a subset of that culture’s norms of acceptable behaviour for women. The women were, of course quite good “Ladettes” but did not adhere to the mainstream expectations of behaviour for young women and as a result seemed to be at odds with what British culture *at large* demands of its women, but what isn’t addressed here is what the norms of behaviour are along class lines, *as well as along gender lines*. In other words, what the television programme demonstrates is how behavioural norms differ greatly, depending on context. If one of the ladettes returns to her working-class life and continues to behave in the “ladylike” manner that she was trained in, during her time at the finishing school she may find that she castigated and made fun of by their working-class peers for being uppity or pretentious. This is because the in-group norms of British working-class, white women dictate specific ways in which they are to adhere to a broader culture-wide norm of behaving according to your station. In other words, the upper-class behavioural norms that were taught to them violated norms of behavior for a certain kind of white, working class woman. It is only in a context where the restriction of class immobility is suspended (a reality television programme) that the behaviour becomes appropriate, acceptable behavior.

### *Section 1.2.3 Scripts, Positioning and Indexing*

Cultural scripts, it seems, are one of the results of the ideological impact of stereotypes on the norms of linguistic behaviours. In what follows, I will outline how this, I believe, is the case. I will bring in some empirical work, cited by Deborah Cameron (2007) and, Eckert and McConnell-Ginet (2003 and 2013), as well as a few helpful examples. Let’s begin with the following example, from a meta-analysis done in 1993 by Deborah James and Sandra Clark.<sup>25</sup> In this study James and Clark (1993) looked at the (stereotypical) claim that men interrupt others in conversation more than women. They analysed 55 different studies that were conducted between 1965 and 1991. Thirteen of the studies found that men interrupted others more. Eight of the studies found that women interrupted significantly more. What is more interesting, however, is that 34 of the studies found that there was no significant difference between the number of times men interrupted and the number of times women interrupted. The question we have to ask ourselves is, if it is really the case that women and men interrupt about the same amount, why does the stereotype persist? This is obviously a huge question to answer, that I don’t intend to fully address here. What I will attempt to do, however, is look at how we might get from the perception that men interrupt women (or, conversely that women are more passive in conversation and less likely to interrupt), to a cultural norm of conversation. Cameron notes

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<sup>22</sup> Ibid.

<sup>23</sup> As in: “You’re so cute when you are angry.” Ibid.

<sup>24</sup> Cameron (2007):

<sup>25</sup> James, D, & Clark, S. (1993). “Women, Men and Interruptions: A Critical Review.” In: Deborah Tannen (ed.) *Gender and Conversational Interaction*. Oxford: Oxford University Press. 231-280.

in her 1997 article “Performing gender identity: Young men's talk and the construction of heterosexual masculinity,” notes that stereotypes can serve as a kind of confirmation bias that shapes the way we process and understand our experiences. In her article, she presents an example of this: an undergraduate presents an analysis of a conversation among his friends where the student points out that the speakers stick relatively closely to certain “male” topics. She states:

The student who collected the data drew attention to the status of sport as a resource for talk available to North American men of all classes and racial/ethnic groups, to strangers as well as friends, suggesting that 'sports talk' is a typically 'masculine' conversational genre in the US, something all culturally competent males know how to do.<sup>26</sup>

The point the student seemed to be trying to make in analysing the recording of his housemates' conversation was that sports-talk was a masculine topic of conversation that crosses other differences among men in North America. After reading this student's work, and listening to the taped conversation, Cameron (1997) noticed that there was something her student missed. The student, Danny, had titled his paper “Sports, Wine and Women,” and though these topics were discussed among him and his housemates, they also discussed the topic of other men. Cameron states that:

Apart from basketball, the single most prominent theme in the recorded conversation, as measured by the amount of time devoted to it, is 'gossip': discussion of several persons not present but known to the participants, with a strong focus on critically examining these individuals' appearance, dress, social behaviour and sexual mores.

The point here that Cameron seems to be making is that though Danny's observations about “men's talk” are not false, they are *incomplete*. Danny's description was shaped by his own expectations about how men talk, which allowed him to latch onto the elements of the conversation that reflected what he suspected to already be the case: sports is a distinctly masculine way of talking that can be used to bridge differences of age, class, race and so on. Because Danny was already working with an understanding of “what men talk about” he missed the other significant topic of conversation: gossip about other men—specifically about the sexuality of other men.<sup>27</sup> Cameron notes that, “His conclusions were not unwarranted, but his description of the data...was shaped by expectations that caused some things to leap out of the record as 'significant', while other things went unremarked.”<sup>28</sup> He had a belief that was reinforced by a cultural norm (the belief that women gossip and men don't), and that norm shaped Danny's understanding of the conversation.

It is here that Cameron introduces the idea of cultural scripts into the paper (though she uses the terms “frame” and “script” interchangeably.<sup>29</sup> She describes them as “the norms that define what kinds of language [sic] are possible, intelligible and appropriate resources for performing [gender, race, and so on].”<sup>30</sup> Though this is a general gloss of what we have previously been discussing, it is consistent with cultural scripts, as described by either Goddard and Wierzbicka (2004) or Wong (2004). Moreover, though Cameron (1997) doesn't go onto articulate the cultural norm in the manner that Wong (2004) does, it is possible to do so:

### **Script One:**

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<sup>26</sup> Cameron (1997): 50.

<sup>27</sup> Cameron (1997): 47.

<sup>28</sup> Ibid.

<sup>29</sup> Cameron (1997): 49.

<sup>30</sup> Ibid.

[people think like this]  
when I want to say to other men something like this:  
    I have masculine traits  
It's good if I say something like this instead:  
    That other man is gay

I should note here that neither Wong, or anyone else for that matter, seems to be committed to the claim that scripts—especially like the ones I will discuss here, and later on—are consciously held or represented to language users.

### Script Two:

[people think like this]  
When I say something, I don't want someone else to think like this about me:  
    This man doesn't like women and is feminine because of this.  
If someone else thinks like this about me, I will feel something bad.<sup>31</sup>

What we are presented with in Cameron's (2007) paper, is an example of the complicated way in which cultural norms may vary depending on the stance and subject positions of those involved. Even though gossiping is typically associated with "women's language", Danny and his friends employed it to assert their maleness. Cameron's point here is that discussing other men, and specifically the sexuality of other men, is not a defiant flouting of masculine language norms, but an instantiation of them. They spoke about the other men's sexuality in such a way as to reinforce their own heterosexuality. They treated the men as *other or alien*, and in so doing made a performance of their adherence to the cultural norms of male sexuality. This is one of Cameron's (1997) main points: The gossip and discussion of other men is not a performance of feminine norms. The speakers are using the gossip about other men's sexuality to assert their own masculinity. They are positioning themselves in a certain manner in regard to other men, and in particular, in relationship to the sexuality of those men. Like the other tools mentioned above, that Lakoff (1975) attributes to "women's language", gossip is a linguistic tool that can be used in a variety of ways, to accomplish a variety of goals. Here, Cameron (1997) points out that gossip is being used in order to bring the men together (finding a common ground), as well as a way in which the men can perform their own masculinity as they speak out about the "gay" or "queer" attributes of the men about which they are speaking. They adopt a certain stance (an idea position) about the men they talk about and are indirectly indexed as *men* through a shared ideological link (norms about masculinity), that connects their stances to their subject positions indirectly.

Why did Danny miss all of this, in his assessment of the conversation? As I have already stated, it seems that his evaluation was heavily influenced by his beliefs about "men's talk".<sup>32</sup> He picked up on those parts of the conversation that reinforced what Danny already believed. What is going on here is not merely a methodological mistake by an undergraduate student (the conversation was taped and then written about by Danny for a course that Deborah Cameron was teaching). Danny's understanding of the types and kinds of speech acts performed over the course of the conversation was impacted by his already held beliefs about **the kinds of things men do with their words**. Danny's beliefs about men's conversational habits—that are both widespread and false—led to a systematic misunderstanding of what was taking place in their conversation. This will, I believe, have

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<sup>31</sup> It is important that these scripts need not be consciously held beliefs.

<sup>32</sup> Cameron (1997): 50.

an impact on what we can say about the role of uptake and understanding in determining what speech act can be said to be performed.

Subject and idea positioning belong to the broader category of “discourse positioning.”<sup>33</sup> We don’t merely position ourselves relative to the content of our utterances by selecting from a set of words in our vocabulary. Eckert and McConnell-Ginet state that when we make certain linguistic choices (by deciding how and what we say), “We push ideas with more or less force, we modulate them in response to actual or anticipated reactions of others...we play with them and with the linguistic forms we use for expressing them.”<sup>34</sup> In addition to this, we also place ourselves in certain ways with regard to others. We may do this generally by the way we act, and feel towards others, but we may also do it via our speech and conversation. Eckert and McConnell-Ginet call this process, “developing and elaborating a meaningful discourse.”<sup>35</sup> The process of communication, as we have already seen, is a complicated and messy business. Eckert and McConnell-Ginet point out that

We attend to others’ ideas and feeling as we assess their capacities, their institutional status, their stance towards us. Not only do we modulate and modify our own ideas and feelings, we also place one another in particular (and changing) discursive positions.<sup>36</sup>

In other words, we are not only taking into account the appropriate manner to express ourselves, but we also take into account what is appropriate given our relationship to others to whom we are speaking (as well as any bystanders), given the amount of social power each party has, what relationship the addressee might have to the content of my speech, what role each of us are in at the time of the utterance and so on. So, for example, if I am going home for Christmas and find that my very Catholic cousin wants to know what I am studying at university, and I am working on a thesis about the bible as a work of fiction, I will have to take into account not only how to effectively communicate what my thesis is about (selecting the right words, using the right language, and so on), but I will have to make other, important considerations. If I don’t want to offend my cousin, I will have to think carefully about how to both communicate the content of my thesis. If I like my cousin and don’t want to offend them or make things uncomfortable, I may have to communicate—at the very least—that I don’t think that the book at the foundation of their religion is nothing more than a bunch of very depressing fairy tales. If I don’t care about offending my relative, or am looking to kick up a religious debate, I am going to make other decisions. (Perhaps I’ll ask leading questions instead of answering outright in order to kick up a debate, or I’ll state the topic of the thesis outright.) Regardless, any of these options for providing an answer from my Catholic cousin are going to depend not only on what kind of effect I am trying to produce, but also how I think they will react. Perhaps my cousin is only Catholic because his wife wanted to be married in her local Catholic church and he had to at least pretend to be Catholic himself in order to get permission. The point here is that both myself and my cousin are directing the conversation through a complicated process of possibly unconscious beliefs and opinions about how to converse in the manner in which we’d like. The important point here, for considering oppression and language is that: “Such discursive positions are tied to cultural contexts and social situations and they are seldom completely...neutral.”<sup>37</sup> If we take this point seriously, variation becomes important not only within a single culture, but between individuals. What sort of relationship the conversational participants have may, in some cases, have a greater influence on the norms of linguistic behavior than their social categories. Institutional

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<sup>33</sup> Eckert and McConnell-Ginet (2003): 157.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Eckert and McConnell-Ginet: 157.



authority may supervene on the interaction in some cases, while in others it may be undermined by social categories and informal power relations, and of course, past personal history with conversational participants may be the ultimate deciding factor. Or, further still, all three may combine in certain ways that may either dictate a clear way forward or put the participants in a double bind as anything said (or done) will violate norms.

## Section Two: Kukla's Theoretical Framework and Discursive Injustice

Kukla has four specific goals in mind:

One: examine three examples of discursive injustice. Two: contrast her account with Hornsby and Langton's account of illocutionary silencing. Three: argue that lack of complete control over the performative force of our speech acts is universal, and not a special marker of social disadvantage. Four: suggest that women and other relatively disempowered speakers are sometimes subject to a distinctive distortion of the path from speaking to uptake, which undercuts their social agency in ways that track and enhance existing social disadvantage.<sup>38</sup>

One of her aims is to investigate just what it is that fixes the performative force and pragmatic structure of speech acts. The semantic content may be helpful in that it may be able to flag force with the meanings of the words that are contained within the utterance. We depend on a complex set of discursive conventions to set and decode the performative force of speech acts, along with the relevant conditions and context. Part of this interpretation and understanding of performative force is coming to terms with what the implicit and explicit conventions are that govern various elements such as tone, context, etiquette, conventional flow, and so on. Though it is sometimes the case that these conventions are transparent to us, they can also be opaque. (For example, if someone at the end of a date says, "I'll call you soon"—it may be difficult to situate and interpret the performative force.) Kukla says that there is a web of conventions, rituals and circumstantial clues that make up the context and without these, speech acts would have no performative force at all.<sup>39</sup>

Her definition of "discursive injustice" is:

When members of any disadvantaged group face a systematic inability to produce certain kinds of speech acts that they ought, but for their social identity, to be able to produce—and in particular when their attempts result in their actually producing a different kind of speech act that further weakens or problematizes their social position—then we can say that they suffer a *discursive injustice*.<sup>40</sup>

Discursive injustice is a specific incapacity wherein a speaker is unable to deploy standard (conventional) communicative resources to perform their intended speech act due to their membership in an already socially oppressed or disadvantaged group. Specifically, discursive injustice, on Kukla's view, undercuts and enhances their oppressed status. She states that the performative force is, "distorted in ways that enhance their disadvantage."<sup>41</sup> Let's take an example: a black woman at a dinner party where she is the only non-white person in attendance utters the words, "Please pass the salt." If this case is one of discursive injustice, then something goes awry between her issuing the correct pragmatic input (using the right words, in the right context and so on) and the utterance

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<sup>38</sup> Kukla (2014): 440.

<sup>39</sup> Kukla states that performative force depends on: "a wide array of social arrangements and conventions concerning who gets to name whom and under exactly what circumstances." (441)

<sup>40</sup> Kukla (2014): 441.

<sup>41</sup> Kukla (2014): 441.

producing the traditional pragmatic output that is associated with the input. In other words, if the other people take the utterance to be not a polite request but instead an order, despite her following the “rules” of convention for issuing such a request, we can say that her speech has been derailed in some significant manner. But simply finding yourself with unexpected or “incorrect” pragmatic output isn’t enough to get us to discursive injustice. It is because of her already disadvantaged social position (as a woman of colour) and the fact that the trope of the “angry black woman” is a key element in the oppression of black women, that this failure becomes an instance of discursive injustice. The conventions of the situation are such that a polite request is the appropriate speech act for achieving what Austin and Langton call the perlocutionary act of the bringing the salt from one side of the table to another. However, because of her position in society, our dinner party goer has found that the white guests have taken her to be issuing an order. Demanding to be passed the salt, in this situation, is culturally inappropriate and violates the norms of the situation. It is, simply put, considered rude. Even though Cristy, our woman of colour, intended to perform a request and used all the tools necessary to do so, her identity as a woman of colour (in particular, as a black woman) has led the other guest to take her as ordering them to pass the salt. This means that she is not only understood as violating cultural norms, but also as acting in accordance with the stereotype that undermined her speech act in the first place.

Kukla aims to retool Langton’s case from one in which the person experiencing the harm is silenced to one in which their speech act’s pragmatic structure has been warped. Kukla states that, “This is the sense in which silencing counts as a limiting case: it presumably transforms the act into *no speech act at all*, rather than into one with a different pragmatic structure.”<sup>42</sup> In other words, to truly be an instance of silencing we should be left with a case that has certain pragmatic input,<sup>43</sup> but no output at all. Rather than the refusal Langton discusses receiving the incorrect uptake and being taken as an illocutionary act of consent (or, at least an utterance with the same performative force as that of consent), Kukla seems to suggest that if it is silencing we should be left with an utterance without any performative force at all. In this case (one without performative force), we will be said to lack pragmatic output, which Kukla defines as “the normative statuses [the utterance] instantiates.”<sup>44</sup>

## 2.2 Pragmatic inputs and outputs: an example.

If I decide to get married, and go through with the ceremony, this speech act changes several things in my life. My tax status is suddenly different (I can no longer file as a single person), my family relationships are altered, as I’m now legally and normatively bound to another family unit, and my new father-in-law is now obliged to invite me on the family holiday, even if he thinks I’m obnoxious when away from home. These are all new normative statuses that are brought about due to the illocutionary act of marrying—they are all (though not the only) pragmatic outputs. The pragmatic inputs are the set of felicity conditions that must be met (signing the marriage license, not being related by blood, and so on), as well as the context (a wedding of some sort, in the presence of witnesses, and being at the *right wedding*).

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<sup>42</sup> Kukla (2014): 441.

<sup>43</sup> Pragmatic input includes felicity conditions as well as constraints on context, the relationship between the audience and speaker as well as various other conventions.

<sup>44</sup> Kukla (2014): 442; Though I will refrain from engaging Kukla critically until the next section, I do want to note here that what Kukla says on this point—that a case of silencing should have no pragmatic output, rather than a stilted pragmatic output—seems to merely be an issue with the terminological metaphor. However, her discussion of the pragmatic functions is helpful to understand what might be happening when we find our speech acts distorted for the sort of unjust, identity-based reasons that Langton, Kukla and I have in mind.

Kukla notes that “different speech-act [sic] types...have different characteristic outputs.”<sup>45</sup> In other words, there are certain outputs—different normative statuses—that are typically paired with certain pragmatic inputs. For example, after I issue you an invitation to my birthday party, (and indeed whenever I issue an invitation to someone), you are always entitled to attend my party. (Though it should be noted that we do speak of “uninviting” people to events, though it may be that these “speech act types” have similar corresponding outputs that instantiate the normative status such that you are no longer entitled to attend the event to which you were originally invited.)

Some of these pragmatic outputs are what Kukla calls, “characteristic outputs”<sup>46</sup> which help to sort speech acts into different pragmatic kinds<sup>47</sup> even if they do not exhaust all the possible pragmatic outputs of an utterance. If a man runs up to a police officer, for example, and utters, “Help! Someone’s kidnapped my child.”—given he fulfils all the necessary pragmatic input—one characteristic output might be for the police officer to create a missing child report and initiate the necessary procedure for issuing an AMBER alert.<sup>48</sup> There might be many other characteristic outputs the parent will be aiming for: concern from the police officer, recognition of the danger his child is in, and so on. It should be noted that Kukla does not spend a lot of time or space on characteristic outputs, but it is an interesting idea that I will return to later in this chapter.

### 2.3 Normative Status Materialism and the Foundation of Kukla’s Pragmatic Theory

Kukla takes herself to be a materialist about normative statuses (her terminology). This is a position that essentially requires that the speaker secure uptake for the speech act to have *any performative force at all*. In other words, speech acts produce pragmatic outputs, some of which help us sort the acts into kinds. These outputs—broadly speaking—institute certain standards of behaviours or norms, which we can call “normative statuses” and that must *actually* alter the behaviour of people in the material world, in order to be said to exist. The pragmatic output of a speech act, in other words, must alter a person(s) disposition to act in the real world. If this isn’t the case, then we cannot say that there is any pragmatic output since this output is what puts normative statuses into place. Pragmatic outputs are dependent on normative statuses, which in a theory that is committed to a materialist view, means that pragmatic outputs are dependent on whether or not the shifting social space of norms actually changes behaviour in some material way.

Kukla is careful to point to the fact that uptake is only one small part of the story of performative force. It is a necessary one, for without it we cannot say that an utterance has performative force of any kind—but it is far from sufficient and should not be thought of as the passive recognition of intention that Langton (and Hornsby) take it to be. Other factors, such as pragmatic input and context will determine what pragmatic kind of speech act we’ve got on our hands. Additionally, since Kukla is a materialist about normative statuses, it follows that we may not know what kind of speech act we’ve performed until after it has had its impact on others, and they’ve finished acting (or not acting), in a certain manner. Kukla supports this by stating:

The crucial point here is that the enacted conventions and rituals that provided the frame within which any speech act can have a performative force—the rituals that enable a marriage

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<sup>45</sup> Kukla (2014): 442.

<sup>46</sup> Kukla (2014): 442.

<sup>47</sup> This is Kukla’s terminology.

<sup>48</sup> AMBER stands for America’s Missing: Broadcast Emergency Response—a public initiative in the United States to find missing children.

pronouncement...or whatever it may be –do not artificially stop at the moment of the utterance.<sup>49</sup>

Her point here is that the performative force of an utterance is determined partially by uptake, but only in virtue of its causal role in impacting socially situated performances that occur before, during and after the utterance. The details of all of this, says Kukla, are what ultimately determine the performative force and pragmatic kind of the speech act. In the end, this is what will tell us what kind of speech act has been performed.

Kukla goes on to expand on this idea, and her notion of uptake, which is meant to be radically different from that found in Langton's work. She notes that there is, "...no principled or sharp line between a speech act receiving mistaken uptake and a speech act being constituted, maybe in unexpected ways by the uptake it received."<sup>50</sup> In order to illustrate this difference, and flesh out the precise notion of uptake she is working with, she uses the following example:<sup>51</sup>

*My partner and I decide we are going to get married in a religious ceremony that has many, complicated ritualistic details, but zero legal significance. We decide to get married on the Playa at Burning Man, by the 90's rave DJ, Lisa Pin-Up, wearing costumes made of recycled Nescafe wrappers.*<sup>52</sup>

If no one—including myself and my partner—acts as though the marriage has occurred (with the appropriate and corresponding normative shifts in status), then the speech act has not received the appropriate uptake and has failed to have the performative force of a marriage ceremony. If, however, a person walking by the ceremony accidentally takes it to be something else (such as an advertisement for Nescafe), the utterance has received the incorrect uptake. It is not entirely clear which case Kukla wants to say is a case of "mistaken uptake" and which has been constituted in "unexpected ways by the uptake it received."<sup>53</sup>

As stated before, Kukla aims to set her conception of uptake apart from that operative in Langton's work. The final, major point she aims to make with regard to this, is that the role of the audience's recognition of speaker's intention is not given privileged status in Kukla's theory. It is still an important part of the story; however, its importance is found in just how the audience's recognition is enacted and impacts social space. Uptake should not be seen as a passive moment, separate from the working mechanisms of the speech act. Uptake should be seen as an integral part of the performance of the speech act, working along with other pragmatic input to constitute the, "...deployment of conventions and rituals that typically outlast the speech act itself."<sup>54</sup>

I will return briefly to Kukla's notion of uptake, later on in this chapter. For now, I will move on, as she does, to exploring the framework of discursive Injustice.

## 2.4 Discursive Injustice

In standard<sup>55</sup> linguistic interactions, there is a whole network of conventions that tell a person when they are entitled to perform which speech acts in which contexts. For example, boarding a bus entitles

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<sup>49</sup> Kukla (2014): 443.

<sup>50</sup> Kukla (2014): 443.

<sup>51</sup> I have altered the theoretically unimportant details slightly.

<sup>52</sup> Lisa Pin-Up appeared in a Nescafe advertisement in the early 1990's.

<sup>53</sup> Kukla (2014): 443.

<sup>54</sup> Kukla (2014): 444.

<sup>55</sup> "standard" is Kukla's phrasing. (444)

me to request a range of tickets from the driver, or ask certain questions. However, I am not entitled to issue an imperative to the driver to let me drive the bus. Kukla states that in most ordinary situations we can combine the right words, (as well as tones and gestures), to perform a speech act of type A, in context C, and they will be entitled—on Kukla’s view—to do so. This entitlement is in accordance with the conventions of the situation and the speaker will be given uptake as having performed the speech act, type A (and that she will have done so).<sup>56</sup> In ordinarily-functioning conversations, the audience members, who are party to the speech act, will take the speaker as being entitled to perform the speech act that they are attempting to perform. As a result, the audience responds as though the speaker as performed speech act type A and help to give the speech act the output that is conventionally matched to the speaker’s input.<sup>57</sup>

In other words, if you are conventionally entitled to perform a speech act in a specific context (ask what direction the bus is going in, ask for a single ticket to X bus stop, and so on), and you utter the right words (“Is this bus going into the city centre?” versus “Roses grow on the moon.”), you will normally secure the corresponding uptake and the audience will recognize this and treat you as such.

Kukla’s claim, however, is that sometimes your disempowered social position can interfere with this process. As we have seen throughout our discussion, you might follow all the rules, be in the right context, and yet, simply because of your gender (or race, ability, or so on), the performance might not receive the uptake conventionally associated with it. Moreover—and this is what Kukla takes as important to her concept of discursive injustice—the alternative uptake might actually constitute an alternative speech act that not only is different from the one a man (or other relatively advantaged person) would get, but also one that enhances the speaker’s lack of power and disadvantage.<sup>58</sup> The force of our words then, is out of our control in a particularly distinctive manner. It’s not just an inability to control how we are perceived by others. This inability to “marshal standard conventions”<sup>59</sup> means that there are additional barriers to performing certain speech acts that aren’t allowed by the official rules, as it were. For example, let’s take the practice of signalling a bus to stop: the convention in Anglo-English contexts is to stand on the pavement and stick your hand out. This is a cultural norm, and a somewhat formalized part of Anglo-English society. If a black woman, then sticks her hand out to signal the bus to stop, and it passes on by, and then learns afterwards that busses won’t stop for black women who is by herself, no matter what she did, we would have a clear instance of injustice. There is an informal rule that she wasn’t aware of, that she can’t easily control, and that will undermine her already disadvantaged social position. The official response from the bus company may be to say that all you have to do is stick your hand out. However, if, in our example, there is a premium put on white bodies and white feelings, and little-to-no regard of black bodies, and their rights and safety, it may become an informal convention to not pick up single black women. This convention is now a rule that selectively applies to some merely because of their gender and their race, it makes it more difficult for black women to get to jobs, childcare, and move around freely, and if there are no white people to be seen, they will struggle to meet the conditions for hailing a bus.

Kukla, as I take her, is trying to describe a similar situation with speech acts. There are additional, informal rules that rigidly apply to different people based on identity conditions. The speaker cannot readily change her identity or change (usually) the way in which her audience interprets her identity. She assumes (at first, at least) that the rules apply to her in the same way they apply to everyone else,

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<sup>56</sup> Kukla (2014): 444.

<sup>57</sup> Ibid.

<sup>58</sup> Kukla (2014): 445.

<sup>59</sup> Ibid.

and only discovers that she has failed to meet some unknown condition only after her utterance receives differing uptake from the kind she had in mind.<sup>60</sup> She has lost control of her words, and furthermore, the way in which she loses control makes her oppressed social position worse and not better. Like an inability to hail a bus affects your ability to get to your job, which then worsens your financial position and ultimately your social power, our speaker's inability to employ conventional measures to perform standard speech acts widens the gap between her and those with more social power. In what follows, I will outline an example that Kukla uses to illustrate the way in which someone's social disadvantage can be increased in virtue of this lack of control.

## 2.5 Imperatives versus Requests

We will now turn to Kukla's particular example of discursive injustice. Celia is a floor manager at a heavy machinery factory, where only 5% of the workers are female. She has authority to give orders on the floor and should use her authority. Kukla states that, "She uses straightforward, polite locutions to tell her workers what to do: 'Your break will be at 1:00 today,' and so on."<sup>61</sup> Despite all of this, compliance of employees is low. They think she is a "bitch."

Why? Perhaps they are being deliberately insubordinate because of their explicitly sexist views. In this description, the employees—importantly—still take her utterance as orders. This is, of course, not a very interesting description. Kukla suggests that perhaps there is something subtler going on here. Even though Celia is entitled to issue the orders, in this context and like our woman in Langton's case, and she follows the conventions that, "typically would mark her speech acts as [the intended speech act], because of her gender, her workers take her as issuing *requests* instead."<sup>62</sup> Like the woman attempting to refuse the sexual advance, Celia has followed all the rules of performing her intended speech act, however for no other reason than her worker's perception of her gender, her speech act receives unconventional uptake.

It will be useful here to say a few things regarding Kukla's thought on requests and imperatives. As has been noted in the previous chapter, it seems that both can be used to achieve the same goal. The Prime Minister can ask her aide to bring her a cup of tea by requesting one: "Clegg, would you bring me a cup of tea?" She can also get him to bring her one by using an imperative: "Bring me a cup of tea Clegg. Milk and no sugar." Kukla asserts that the former is not merely a weaker form of the latter. The pragmatic structure of each is distinctive enough to set one apart from another. An order is, "designed to impute obligations to follow them."<sup>63</sup> Requests, however, allow one's audience to acknowledge the legitimacy of its issuance, while deciding whether or not to grant said request. Kukla's claim here is that granting a request is never obligatory, but essentially the same as doing someone a favour. Kukla states that, "The freedom to grant or refuse a request is not a product of it being too 'weak' to obligate."<sup>64</sup> The point here is that though we might use both an imperative and a request to produce the same effect, there are different social norms associated with each, which accounts for the difference in pragmatic structure. To illustrate this, it will be helpful to consider another example. If I ask you to come to brunch with me, I don't aim to obligate you to attend. My aim in asking if you would like to come is to get you to attend out of a genuine desire to spend time

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<sup>60</sup> This sentence is not describing a necessary aspect of discursive injustice, but I suspect a common enough one.

<sup>61</sup> Kukla (2014): 445.

<sup>62</sup> Kukla (2014): 445-446; original emphasis.

<sup>63</sup> Kukla (2014): 446.

<sup>64</sup> Ibid.

with me. I would be rather offended, it seems, if I found out that you attended merely out of a sense of duty or obligation.

Furthermore, Kukla states that imperatives and requests require different responses if cooperation is achieved. If Nick Clegg brings Theresa May her cup of tea after being ordered, Kukla claims that gratitude is neither called for, nor felicitous. “To be grateful to someone for following an order is to undermine its authority as an order,” states Kukla.<sup>65</sup> If, however, you agree to come over for brunch, an expression of gratitude is both appropriate and required.<sup>66</sup>

Kukla’s goal here is to call attention to two different social acts that a person can perform with their words. The main point here is in drawing out the distinction between speech acts that have different performative force, and that subsequently call for different kinds of uptake. Crucially, she notes that:

Whether someone is performing an order, or a request is not determined primarily by surface grammar, but by the way her act, in all its material texture, is situated within a social narrative that takes place in a context that is structured by normative relationships of authority, friendship, and so forth, as well as a network of discursive conventions and social rituals.<sup>67</sup>

If Celia’s utterance gets uptake of a “request” then a number of issues will arise. Compliance will be low, since granting requests is optional, it will become difficult for her to manage her employees or run the floor, and this will render her ineffective at her job. This explanation, according to Kukla, allows us to explain why her employees and co-workers find her so rude, even if they aren’t explicit misogynists.<sup>68</sup> Others at her work will expect her to express gratitude after they comply with the request. If she believes herself to be issuing orders, that gratitude will not be forthcoming and therefore she will be taken as rude (and what is a rude woman, but a “bitch”). Additionally, because the locutionary conventions are slightly different for requests and for orders, she will be taken as issuing a *rude request*, which once complied with, won’t receive an expression of gratitude—all of which further relegates Celia to the category of “bitch”. Furthermore, if Celia realizes what’s going on, her situation will not be remedied by merely *leaning in* and adhering to the conventions of requests when she wants to issue orders to her employees. This is because requests carry with them the option of non-compliance. This means that Celia will find her authority even further undermined, and as a result be even less effective at her job.

Like we have previously discussed (in subsection 2.4), her gender—or at the very least others’ perception of her gender—distorts Celia’s ability to exercise her agency via speech, which further undermines her already disadvantaged social position. She deploys discursive conventions, but it is her gender that keeps her from using them to do so in a way that suits her “social position and needs.”<sup>69</sup> Her position is one that Kukla rightly calls, “discursively unmanageable”<sup>70</sup>: every time she tries to issue an order and achieves the incorrect uptake to suite her needs, her power to control her workplace situation through speech further deteriorates.

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<sup>65</sup> Ibid; Kukla notes her that she is not interested in “ordinary language uses of order and request”.

<sup>66</sup> This, I believe, will be highly context dependent and perhaps even misses some important aspects of language use when it comes to subject positioning. I will, however leave this point for now and return to it in the next section.

<sup>67</sup> Kukla (2014): 446.

<sup>68</sup> Kukla (2014): 447.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

Celia's gender "queers her ability to exercise her agency," through speech, according to Kukla.<sup>71</sup> This queering keeps her from deploying discursive conventions that are appropriate or suitable to her social position or needs, in an efficient manner. This inability further undermines any subsequent attempts she may make to deploy these discursive conventions.<sup>72</sup> Unlike the actor trying to warn an audience of a fire, Celia's situation is neither straightforward nor does it involve a ritualized context. Simply in virtue of being a female floor manager, she finds herself unable to issue an order because of what Kukla calls, "subterranean assumptions and habits,"<sup>73</sup> These habits and assumptions are difficult to articulate, and those making the assumptions seem as though they would be unlikely to acknowledge the prescriptive force they have over the situation. While the actor's inability to warn is a form of silencing, it is not an instance of discursive injustice because it doesn't enhance the actor's systemic disadvantage—though the actor may have this disadvantage qua another aspect of their identity. The failure to warn is clearly bound by his physical location (on a stage), and the activity he was engaged in (performing in a play). The failure does not enhance his disadvantage in society, as someone who acts in plays. Furthermore, there is no real system of oppression that is being tracked by his inability to warn, *while on stage*. As I have already noted, if our actor is systemically disadvantaged because of his class status (which may be related to his career as an actor), or because he has a disability, for example, then he may find himself a victim of discursive injustice *in other contexts*. However, as he stands on the stage, and shouts, "Fire! Fire!"—he is not, in that moment, a victim of discursive injustice.

Celia (and perhaps our actor, in other contexts), however, will find her problem taking root and invading all aspects of her professional world. It will be given strength by, "broad, deeply rooted social facts about gender relationships and unjust power relations".<sup>74</sup> Celia doesn't just find herself in a new situation where abnormal, yet stable conventions are now in play. There seems to be a condition that Celia must meet in order for her utterance to have the performative force of an imperative: she must be a man.<sup>75</sup> Yet this is (1) not possible<sup>76</sup> and (2) not a condition that any of her employees would likely articulate as necessary. Gender is not a part of the formal norms for issuing orders, yet these speech acts (at least in some contexts), seem to only be available to one gender, and not the others.<sup>77</sup>

## Section 2.6 *Entreaties to Speak*

There are a handful of elements that entitle a person to perform speech acts of certain types: facts about someone's authority or their credentials, the relationship between the speaker and the audience, and so on. Kukla suggests in this section that sometimes a woman speaks as though she is already part of the relevant discursive community (what she calls a "participant in a discursive game"<sup>78</sup>) and only realizes from the uptake the utterance receives, that in fact, this is not the case. To understand why

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<sup>71</sup> Kukla (2014): 447.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Kukla (2014): 448.

<sup>75</sup> Kukla's intention here is not to make a claim about how common Celia's problem might be, or that all female bosses are bound to be unable to issue orders.

<sup>76</sup> This is of course, setting aside Transgender issues for a moment.

<sup>77</sup> We might consider the possibility that in a parenting situation; perhaps a woman would be easily able to issue an order to a child rather than a man—especially if the adult is a peripheral relative, or a caretaker or another sort.

<sup>78</sup> Kukla (2014): 449.



this might be an issue, we will have to back up just a little to understand just how membership in a group might affect your ability to perform your intended speech act.

If we borrow from David Lewis<sup>79</sup> and take conversation to be a game (or like a game), then we need to make sure that we are allowed to be legitimate players in that game, before we can participate. Think of a game of women's basketball. Each team has five starting players that it puts on the court. Before a new player can be put into the game, she has to check in with the scorekeepers (so they can see her number) and she has to wait for a stop in play to notify the player she is substituting in for that they are out of the game (since there can be no more than five players on the court for each team at one time). The substitute player has to perform an entreaty to play (by checking in with the scorekeepers and notifying the player that is to return to the bench), before she can legitimately play in the game. Additionally, to play in the game legitimately at all, the person usually needs to be on the game roster. The teenager selling nachos in the lobby won't be able to become a legitimate player unless she is listed beforehand, and likewise her male co-worker will be ineligible because of his gender. The point here is that there are certain rituals and conventions that have to be met to be eligible to play in the game, and once you are eligible, you must then perform a certain act (an entreaty) before you can actually make a move in the game (go onto the court and catch the ball).

Like basketball, conversation can be seen as a game of sorts. Participants make moves, and their social, physical, etc. status determines if they can play and what moves they can make. If I don't have an M.D., then I am barred from prescribing medicine, and cannot participate in certain medical conversations. Furthermore, if I am not a specialist M.D. of the right type, I will be kept out of participating in some conversations. If I am a neurosurgeon, I won't have the authority to advise a patient on their sexual health. Additionally, if I am at lunch with other medical doctors and there is a conversation about sexual health and reproduction, I cannot participate as an expert since my specialization is in performing surgery on people's brains. I have to count as a member of the right group in order to be a legitimate player in the game. It might be the case that if the conversation turns to surgery, I might be then allowed to participate again as an expert, however if I have an opinion about sexual health I will need to ask if I can participate. In other words, I need to first, "speak in order to be granted status as a speaker with normative standing within a discursive subspace," as Kukla states.<sup>80</sup> In other words, in order to speak as an insider (state my medical opinion on some sexual health issue, for example), I need to request entry into the discursive game.

I might say something like, "That's interesting. Do you mind if I ask a question?" If following this, I am given space to continue, then I have been given the green light to speak legitimately. Even if I don't necessarily follow it with a genuine question, I have been given permission to contribute as a legitimate player, and any moves I attempt to make (anything I say, in other words), will be counted as illegal play, and a breach of the norms of behavior.

What's this got to do with Kukla's point? Let's imagine a different example. Let's say that I'm still a neurosurgeon, and a woman at a table with a group of other neurosurgeons. The conversation is about neuroscience and the best way to cut open a child's head. I might, with good reason, assume that I already am an insider. Instead of uttering words that would be conducive to an entreaty, I dive into giving my opinion. When I am spoken over, or interrupted, I may find out that I was not making a legitimate move in the game (as an insider), but rather improperly asking for allowance to play—and I may only find out due to the uptake my utterance receives that I was doing so.

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<sup>79</sup> Lewis, David (1979) Scorekeeping in a Language Game. *Journal of Philosophical Logic*, 8:3 p.339-355.

<sup>80</sup> Kukla (2014): 448.

Kukla thinks that this is the kind of discursive injustice that is seen when women attempt to speak as experts in traditionally male-dominated fields. Expert speech is given a particular kind of automatic weight that gives the audience a *prima facie* entitlement to trust what the expert says. Furthermore, other experts are not allowed to override the expert's claims because of the former's training (as they might with a non-expert).<sup>81</sup> His standing as an expert alone provides others, reasons to act as he suggests, and advice from him calls for a certain kind of uptake.<sup>82</sup> Therefore, speaking as an expert makes up a certain set of discursive practices that are distinct to the discourse of experts.

Though women might meet the conventional standards for counting as an expert, their speech is taken as a request to speak as an expert. This is not the same as men taking women's expert testimony seriously. The point here is that the men don't actually recognize the women's speech as contributions. Though, if women are allowed to speak as an expert by their male counterparts, their contributions may or may not be unfairly undervalued.<sup>83</sup>

The result of this is that others are free to choose whether or not female experts are given discursive access to the discursive game.<sup>84</sup> Additionally, they are not able to wrangle the normal conventions to establish themselves as experts. There are at least two important consequences of this:

To the extent that our attempts at expert speech are given uptake as entreaties, this places the power to grant entry to the discursive game in the hands of the ones entreated, it becomes, in effect, an act of generosity on the part of our peers to let us play.<sup>85</sup>

And:

If we do in fact produce a successful, generosity-inspiring entreaty, in doing so we may have already undercut our potential to be taken seriously as players once we are granted general admittance to the game.<sup>86</sup>

Let's start with the first of these consequences. As already stated, this puts women in the place of perpetually asking favours of men, with whom they may share qualifications. Though they are peers, women are put in the position of always asking their male counterparts for a favour (to be allowed in). Additionally, the norms of speaking as an expert (making a contribution) are different from those surrounding entreaties.<sup>87</sup> This means that if you don't already realize that you are going to be taken as asking for permission to participate, it's unlikely you are going to employ the right norms (and therefore you will be less able to "inspire generosity"). Being confident in what you are saying, making a good argument and so on, are all things that are appropriate for giving expert contributions. However, if you have not been given permission to participate and you speak as though you already have permission, you will likely be taken as alienating or arrogant.<sup>88</sup>

On the second consequence: Women in particular have to show that they are going to be nice and play well with others, if they are going to be allowed to play. This is often disempowering and undermines the woman's status as "heavyweight experts".<sup>89</sup> This also means that women are often relegated to

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<sup>81</sup> Kukla (2014): 449.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Kukla (2014): 450.

<sup>86</sup> Ibid.

<sup>87</sup> The norms are also different for inspiring generosity so one can be allowed to legitimately contribute.

<sup>88</sup> Kukla (2014): 450.

<sup>89</sup> Kukla (2014): 450.

permanent status as protégés.<sup>90</sup> Asking permission to become a legitimate player requires supplication that undermines the basic level of authority of women. Though they might have the formal authority or training that *should* give them automatic status as experts and permission to contribute as such, they are forced to ask for the permission anyway (*if they realize this before speaking*) or come across as overestimating their place as experts. This also requires different forms of supplication for different kinds of people and, as we have already discussed, this supplication further undermines their authority. It is in this way that a contribution being given the uptake of an entreaty is another kind of discursive injustice. It is not only that gender is getting in the way of the woman's utterance having the performative force she intends, but that the inability to be taken as contributing as an expert further undermines an already disadvantaged social position.

## Section 2.7 Assertions vs. Expressives

Kukla moves on from entreaties to describe another type of discursive injustice that undermines oppressed people's ability to speak about their own experiences. Specifically, she sets out several examples where the utterances of women are intended to give information about how the world is but are taken to be nothing more than purely personal, emotional outbursts. The intended speech acts she calls "assertions" while the latter she calls "expressives". In what follows I will outline her proposal but suggest a different way to conceptualize the phenomenon. On my understanding, the situations described by Kukla, are instances of testimonial injustice—though this makes them no less salient to the discussion of the role of speech in oppression. I will use the work of David Kaplan (2004) to illustrate the way in which expressives bear cognitive content and may preserve truth in a way that makes them accountable to facts about the external world.

What are assertions? Assertions are claims about how the world is. Kukla specifically states that when we make assertions, we are, "making a truth claim about *how the world is*, and it either is or isn't that way for *everyone*."<sup>91</sup> They are claims about the truth and, if these claims are correct, they make the same claims on anyone who has access to them. For example, if a scientific study finds that free falling objects accelerate at a rate of 9.8 meters per second, per second and everyone in the world knows about this finding, everyone has access to it and therefore it makes the same claim on everyone in the world. That is, this assertion ("free falling objects accelerate at 9.8 m/s<sup>2</sup>") gives everyone the same reason for having the belief that if they drop someone off a building, that person's body will accelerate at this speed (until that body hits the ground). Additionally, this assertion gives us reason for believing that—purely hypothetically of course—if I drop a 90kg person off the top of a 12-meter building, then that person will be going 15.34 m/s when they finally hit the ground.<sup>92</sup> The assertion also gives me (and any witnesses for that matter), a reason to believe that it will take this person 1.56 seconds to hit the ground.<sup>93</sup>

Unlike requests, which are indexical with regards to the way in which they give reasons to act (if I make a request of my roommate and someone overhears me and recognizes the legitimacy of my request, this doesn't give the eavesdropper a reason to act—at least not directly), assertions make equal claims on all those who have access to the assertion. Additionally, according to Kukla, all true assertions have to fit into a single, coherent whole. If I make two contradictory assertions ("the sky is

<sup>90</sup> This also is likely the case along other lines such as race, class, sexual orientation, and so on (especially when we consider the need to "play nice").

<sup>91</sup> Kukla (2014): 450; original emphasis.

<sup>92</sup> Thanks for confirmation of this calculation goes to "The Splat Calculator" found at: <https://www.angio.net/personal/climb/speed.html>. Accessed: 03/10/16

<sup>93</sup> Ibid.

blue” and “the sky is not blue”), one must be false and the other true (or they must be uttered at a different time, place, etc.) since assertions are (generally) claims about the external world. They are truth evaluable in a traditional sense and are constrained by reality as it is. Unlike requests, promises and other speech acts, assertions are constrained by facts of the external world—this is “a governing norm of the language game of assertions.”<sup>94</sup>

Expressive speech acts, on Kukla’s account, are another matter. To illustrate the difference, Kukla turns to Naomi Scheman (1993). Scheman points out that the emotional reactions of women are often taken to be “irrational or non-rational storms,” and that they are “*wholly personal*, quite possibly hormonal [reactions],”<sup>95</sup> that overwhelm women. Kukla also describes the emotions in this case as “diffuse, like moods, or episodic and undirected.”<sup>96</sup> Expressives for Kukla are those that receive uptake as “wholly personal” reactions or emotions. This is meant to contrast with assertions, which in the context of emotional speech acts, get uptake as responses to the external world. The key here, accordingly to Kukla, is that assertions are viewed as potentially rational responses to the external world and can be evaluated for their truth. If the assertion makes a specific claim about how the speaker feels, we can evaluate not only whether the speaker feels that way, but also whether the response is rational or warranted. For example, if Muna utters the sentence, “My boss is harassing me, and it makes me feel uncomfortable,” and this utterance gets uptake as an assertion, we can look at the behaviour of the Muna’s boss and figure out if he is in fact harassing her. Additionally, if he is harassing her, we can evaluate whether her feeling of discomfort is a rational response to his behaviour. It might be that she is wrong—her boss is not really harassing her at all, *or* it might be that her boss has made a joke that was in poor taste, and that there is no pattern or bad behaviour that constitutes harassment (say, for example, that her boss realizes his mistake and otherwise treats her professionally). It might be in the case of the distasteful joke that even if she is wrong in asserting that he is harassing her, her response was still perfectly rational. The point here is that assertions are sentences that have propositional content. On Kukla’s view, they make claims about the external world and can be evaluated for their truth.

Expressions on her account are not truth evaluable, have no propositional content, and therefore make no claims about the external world. Let’s look at a slight variation on our previous example: Muna utters the sentence, “My boss harassed me.” If her speech act gets uptake as an expressive her audience takes her merely as making a “wholly personal”<sup>97</sup> statement about her feelings. They take her to be like the two-year old in the middle of a temper tantrum, who shouts, “Whaaa.” Though there might be a triggering event (a dropped sweet, or the wrong color cup), in the case of the toddler, tantrums are largely caused by the fact that children’s brains are still developing. During temper tantrums the prefrontal cortex specifically (which is responsible for social behaviour, emotional regulation, and impulse control), is underdeveloped.<sup>98</sup> This, in combination with language use skills that have yet to develop fully<sup>99</sup> and the triggering of their fight-or-flight response means that when they shout, “Whaa,” they are performing an expression of an entirely personal, internal mental state: being little and having lots of emotions they don’t understand and the lack of language skills to properly and fully express those emotions. There is no cognitive content in the “Whaa,” of the temper tantrum. It has no truth value; it doesn’t make sense to try and disagree with it as it is a release of pure

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<sup>94</sup> Kukla (2014): 451.

<sup>95</sup> Ibid.

<sup>96</sup> Kukla (2014): 451.

<sup>97</sup> Kukla (2014): 452.

<sup>98</sup> Conger, Cristen, How Stuff Works. 2014. How Temper Tantrums Work. [ONLINE] Available at: <http://people.howstuffworks.com/temper-tantrum.htm>. [Accessed 29 September 2017].

<sup>99</sup> Toddlers at this age usually understand more language than they are able to use themselves. Conger (2014)

emotion. It is a vocal demonstration of a purely internal mental state. If Muna's two-year-old niece is in the middle of a tantrum and shouts, "Whaa," it would be very strange indeed if Muna said, "I completely disagree with you." Similarly, if Muna's co-workers take her (Muna's) utterance to be an expressive, they understand her to be releasing emotion and not making a point about the external world (for example, about the manner in which her boss conducts himself around women in the office). Her colleagues take Muna to be doing roughly the same thing with, "My boss has harassed me," that her niece is doing with their, "Whaa." They take Muna to be communicating something about her internal mental state and nothing more. It is a wholly personal outburst of an emotion that has no relevance for their systems of belief. If Muna's audience takes the utterance to be an expressive, on Kukla's view, it doesn't express a proposition, makes no truth claim and isn't responding to the world. It is an expression of a feeling of discomfort or unease, and nothing more than that.

This error of understanding is a particular harm of the kind that Kukla describes when those from oppressed groups attempt to point out instances of injustice or wrong, such as sexual harassment or racial discrimination. If Muna tells the male head of Human Resources (HR) that her boss is harassing her (by stating outright: "My boss harassed me.") and he takes her to be performing an expressive, then he understands her to be expressing a feeling of discomfort and is not given a reason to make a report or do anything other than perhaps listen to her complaint. If she returns to HR and tells the head of the department again that her boss has harassed her another time, then he still has no reason to act, if he takes her to be performing an expressive. Additionally, even if he suddenly takes one of her complaints as an assertion, he likely will not treat the complaint as part of an overall pattern since her previous statements were all understood as emotional outbursts. Kukla's main point here is that instead of being able to build a case for the fact that perhaps there is a pattern of sexism, women are not even understood as making claims about the world. Kukla states that if the utterance gets uptake as an expressive, the attempt to assert something concrete about public events is re-described by the audience as merely an emotional outburst, and therefore is importantly not part of a meaningful pattern of discrimination or harassment.<sup>100</sup>

I will now move on to discuss David Kaplan, who along with Kukla herself will help point out that her claims about expressives are overstated. I will start with a quote from Kukla about expressives:

But often, I think, these sorts of speech acts, when women perform them, are taken as expressive rather than as claims about the world—more like "ouch" or "congratulations" than like a truth claim.<sup>101</sup>

If Kukla is really trying to say that expressives on her account are more like "ouch" or "congratulations" then it seems strange that she asserts that they don't have content that can be assessed for accuracy. This is where Kaplan comes in handy. He provides us with an account of words like "ouch" that shows that even if Muna's interlocutors take her utterance to be an expressive (which I argue they do not), it can still be assessed for accuracy. In other words, even if they take, "My boss harassed me," as an expressive, expressives still give us information that can or cannot be the case. The issue at hand, I will ultimately argue, is that her interlocutors don't believe that the content of her utterance is accurate, and that this means this case is not one of discursive injustice, but one of testimonial injustice instead.

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<sup>100</sup> Kukla (2014): 453.

<sup>101</sup> Kukla (2014): 452.

In Kaplan (2004), “The Meaning of Oops and Ouch,” he aims to get at the content of words such as “oops,” “damn,” “jerk,” and so on. Swear words, interjections, and epithets all seem to pose issues for formal semantics. For our purposes the analysis of the content of these words will help us understand the issue in Kukla’s analysis.

Let’s start with two examples: “oops” and “ouch”. Kaplan begins with looking at how, when and where we typically use them. If I accidentally touch a hot stove, I might shout “ouch”; if I see someone trip, I might say “oops”. Alternatively, if I see someone burn themselves I might say “ouch” in sympathy, and if I drop a glass I might also say “oops”. What this tells us about the semantics of “oops” and “ouch” is that they correctly apply to some situations and not to others. It would not be appropriate to say “ouch” in response to the question, “Where is this train going?” though it might be appropriate to say “oops” after burning yourself on the stove. It would be inappropriate to say “ouch” in response to having a relaxing message. What the exact descriptive translations of these words is (or can be) controversial. However, for our purposes it doesn’t matter *exactly* how these translations are cashed out. Kaplan roughly translates “oops” to: “I have witnessed a minor mishap.” He translates “ouch” to: “I am in pain”.<sup>102</sup>

Kaplan claims that the correct context of use gives us roughly an idea of their meaning. We use “ouch” when we experience pain. We usually use “oops” when we make or observe others making mistakes. Both “oops” and “ouch” are expressives. They display “something which either is or is not the case.”<sup>103</sup> In other words, expressives perform something rather than stating it plainly and outright. I could say, “That hurt me, and I am now in pain.” This is what Kaplan would call a descriptive. Descriptives *describe*—standard, declarative sentences are descriptives. “The cat is on the mat,” is a descriptive. However, if I want to display or *express* something such as pain, I can say “ouch” instead of “I am in pain.” Similarly, I could say, “I made a mistake,” (descriptive) or I can just say, “oops,” (expressive).

Expressives on Kaplan’s account do not express propositions and don’t make truth claims; however, they can be translated into propositions (aka: descriptives) and express emotion. However, unlike Kukla’s account, Kaplan’s expressives can be either inaccurate or accurate. If the expressive makes a claim about the speaker, Kaplan calls it a ‘subjective expressive’.<sup>104</sup> A subjective expressive is correct if what is displayed about the speaker is actually the case. In the instance of “oops” and “ouch”, “ouch” is a subjective expressive and is correct if the speaker is in pain. On the other hand, if the expressive makes a claim about the external world Kaplan calls it an ‘objective expressive’. “Oops” is such an expressive and is correct just in the case that a minor mishap has occurred.

If I say “ouch” at this moment because I have accidentally touched the stove a few seconds previously and I am in pain, then my utterance will be expressively correct. If I say “ouch” a week later and have not had another painful incident and only experienced a minor burn, that utterance will not be expressively correct. Additionally, if when I burned myself you pretended to be in pain and shouted “Ouch!” for attention, then that speech act would have not been expressively correct. In these latter cases the content (“I am in pain”) does not hold. Kaplan wants to separate the content of expressives from whether or not that information is correct. To better understand how Kaplan views the content of expressives and the question of truth, it will be helpful to look at two arguments he puts forward as examples.

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<sup>102</sup> Kaplan (2004):5.

<sup>103</sup> Kaplan (2004): 5.

<sup>104</sup> Kaplan (2004): 7.

### Argument One:

Premise: That damn Kaplan was promoted.

Conclusion: Kaplan was promoted.

### Argument Two:

Premise: Kaplan was promoted.

Conclusion: That damn Kaplan was promoted.<sup>105</sup>

Kaplan's intuition is such that argument one is valid and that argument two is not. On his view, validity is not about truth preservation, but what he calls, "information delimitation"—that is, the first argument gives us a conclusion that has no more information than can be found in the premise. The conclusion of the second argument, however, seems to have more information than can be found in the premise. If my sister comes home and says to me: "That damn Kaplan was promoted," it doesn't seem unreasonable for me to come to the conclusion that Kaplan got a promotion. However, if instead she says to me, "Kaplan was promoted," it would be very strange if I got from this to the idea that Kaplan wasn't deserving of the promotion or was worthy of my admonishment (especially if I don't know Kaplan).<sup>106</sup> Why? "Damn" adds information to the sentence that is not present when "damn" is not included. Specifically, "damn" is an expressive that shows or demonstrates the speaker's attitude towards Kaplan and/or his promotion. If my sister does utter, "That damn Kaplan was promoted," I not only learn that Kaplan got a promotion, but I also learn that my sister has a certain attitude towards Kaplan and, very likely, his promotion; though I might conclude "that damn Kaplan was promoted," on my own if I know and don't like Kaplan, but this doesn't make it valid. For Kaplan, an argument can only be valid if the conclusion has no information in it that is not found already in the premises.<sup>107</sup> This is what Kaplan calls "information delimitation".

To put this slightly differently, in argument one, nothing is claimed or asserted in the conclusion that is not found already in the premises. Returning to our example, my sister is *roughly* communicating to me that Kaplan got a promotion and that perhaps she thinks he is detestable for it.<sup>108</sup> I have two bits of semantic information: Kaplan's promotion and my sister's attitude towards it (and him). In argument two, however, we get merely: "Kaplan was promoted." From just this statement I cannot get any *semantic information* about my sister's feelings towards this state of affairs. Perhaps, from her tone or body language, I might be able to get some idea of her feelings, but this is not a matter of semantics per se and would be external to the validity of the overall argument and the truth value of the statement. Her tone of voice, the context or her body language might alter what uptake I give the utterance and perhaps therefore alter the performative force of the utterance, but it will do nothing to the semantics (or locutionary act performed).

Kaplan notes that, "one might decide to use truth in a broader way, so that in the case of an expression that has both descriptive and expressive elements, we would say that the sentence is true only if both descriptively correct and expressively correct."<sup>109</sup> In this case, then "That damn Kaplan was

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<sup>105</sup> Kaplan (2004): 5.

<sup>106</sup> Of course, this doesn't mean that it's not logically valid. My intention here is to help illustrate the general point.

<sup>107</sup> Kaplan (2004): 6.

<sup>108</sup> The "translations" of expressives into descriptives here is merely meant to get us close enough to form an idea of what is going on.

<sup>109</sup> Kaplan (2004): 7.

promoted,” is only true **if** the person uttering it has a certain attitude towards Kaplan.<sup>110</sup> This would be what Kaplan calls, “truth-plus preserving” or “truth with attitude”. Kaplan doesn’t say much more on this or why he doesn’t favour this over using a narrower sense of truth.

Let’s now return to our example of Muna. On Kaplan’s view, “My boss harassed me,” is a straightforward declarative sentence. As such, the utterance is a descriptive with a truth value. It expresses a proposition and if there is a failure, it will be not on the level of performative force, but on an epistemic level. Muna’s colleagues simply (and unfairly) don’t believe that she was harassed by her boss. Even if we set this aside and take on board Kukla’s view that Muna’s utterance can fail to be an assertive/declarative/descriptive and is constituted by the uptake it gets as an expressive, Kaplan can still provide us with a way in which to argue that her utterance does have content that either holds or it doesn’t. On Kaplan’s view, expressives can be evaluated. If we take it as an objective expressive, though it would still not express a truth claim or proposition, the utterance will still express something about the world (and can be correct or incorrect). If her utterance turns out to be a subjective expressive, it still expresses something at least about the speaker—that she is being made uncomfortable and that might warrant further action. If Muna instead said, “That jerk harassed me,” then Kaplan can claim (like our previous examples) that the utterance has both descriptive content: someone harassed her, and expressive content: her low opinion of the harasser. The descriptive content is correct if the person is actually harassing her. The expressive content is true if Muna really has a low opinion of the harasser.

I will now move on to make a final point about Kukla, which I hope will demonstrate that she is overstating matters on some level. This is not to say that the phenomenon she points out is not real, or important. On the contrary, the injustice she describes here is especially salient to those trying to dismantle the systems of their own oppression and the inability to be taken as representing the world accurately is a devastating blow to the advancement of that goal.

As we have already discussed, expressives on Kukla’s view are speech acts that get uptake as completely and utterly personal outbursts. They don’t make truth claims, don’t have propositional or cognitive content and merely express emotions.<sup>111</sup> If Muna’s utterance about her boss is taken as an expressive on her view, then Muna is voicing meaningless sounds of discomfort. It is as if the speaker is suffering an emotional breakdown and their claim about the world is taken merely as a symptom of the break from reality. It is taken in this case to be non-responsive to facts about the world. Kukla states that, “there is no point to my arguing.”<sup>112</sup> But then she says that:

Often the response is to point out how the behaviour in question *might* perfectly well have an explanation other than sexism, and how we don’t know enough to judge. Indeed, taken in isolation, almost any incident has plausible explanations other than sexism... [They are taken], in the first instance, as an expression of a personal reaction. If the speaker pushes the point, then the incident is re-described as uninterpretable, isolated incident about which it is impossible to have an informed opinion, rather than as a part of an overall meaningful pattern<sup>113</sup>

It seems like if I react by saying there might be another explanation than the one given by the speaker, I am taking the speaker to be making a claim about the world and that I disagree with them. However,

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<sup>110</sup> Ibid.

<sup>111</sup> Expressives are not necessarily bound to express solely emotions.

<sup>112</sup> Kukla (2014): 451.

<sup>113</sup> Kukla (2014): 452-3



this is counter to a main feature of her account of expressives. According to her, they make no truth claim about the world and, “there is no point to my arguing.”<sup>114</sup> If they make no truth claim in this way, to disagree with an expressive would be like saying, “I disagree,” when a child during a tantrum shouts, “Whaa!” However, if I ask the child why they are upset, it seems like I am taking them to be responding to the world (even if they are still not making a truth claim). However, if someone says to you “My boss harassed me,” and you respond by telling them that their boss was just paying them a compliment, it seems as though you are taking them to be making some sort of point about the way things are in the external world. Even if I say that there isn’t enough information to make a judgement about the situation, I am still taking you to be making a claim about the world, that can be judged for accuracy and that there is a possibility that you have judged incorrectly. In this case, I doubt your claim because I don’t think that the evidence available is sufficient to come to an objective conclusion—and as a result, have made a judgement about your claim and whether or not it accurately reflects the world.

This seems to be at odds with the core aspect of Kukla’s account of expressives: they are understood to be “wholly personal” (like the “Whaa” of the toddler, throwing a tantrum). If the key to discursive injustice is that it undermines someone who is already in a disadvantaged social position, then what appears to be the most salient feature of the audience’s misunderstanding when a woman utters the sentence, “My boss harassed me,” is the disbelief that actual harassment occurred. This is not a failure on the level of uptake. Even if the listener believes the speaker is “being hormonal” they can, and I believe do, take the utterance to be a claim about the world. In other words, the speaker is understood to be performing the illocutionary act she intends, but the hearer doubts the truth value of the statement. Injustice enters the picture when the listener unfairly takes her testimony to be unreliable or false. Perhaps the co-worker thinks she misread the situation but feels badly that she was made uncomfortable—or perhaps he thinks she is being too sensitive or trying to stir up trouble. Regardless, I think this is a case of testimonial injustice, rather than discursive injustice. The failure is not on a linguistic level, but on an epistemic one. This makes it *no less important*, especially considering the issue Kukla raises: *trying to build the case for addressing and convincing others of the existence of sexual harassment, racism and the like*.

## Section 2.8 Limits of Discursive Agency

Uptake for Kukla is both how the utterance is understood and responded to in the real world. Like Hornsby and Langton, Kukla’s claim is that we need to figure out how the audience has understood or taken the speaker’s utterance. Unlike Hornsby and Langton, however, Kukla thinks that you must wait until the audience has responded in some material way. If I attempt to refuse by saying, “No,” in response to your request to pick you up from the pub at 12:30 in the morning, I will only find out if I have performed a refusal once you react. If you say, “Thanks! I’ll see you at 12:30,” I now understand that I have not in fact refused. In other words, the performative force of my utterance has been derailed in some way. My interlocutor has neither understood that I have responded, nor acted in accordance to the conventions and rituals of refusal. Kukla holds this view because for her speaking is a material act that should be taken in its actual context. This context includes the conventions and rituals that are put into play before, during and after the speech occurs and we cannot determine what act has been performed until all these elements are put into play. When things go “as they should” the path between pragmatic input and pragmatic output follows the ordinary conventional or ritualized path. The speaker employs standard discursive conventions, the audience recognizes the context and relevant conventions, mobilizes corresponding rituals and reacts in the standard way, which therefore

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<sup>114</sup> Ibid.

(in and of itself) constitutes the performative force of the speaker's utterance. If in the previous example, you had instead responded to my utterance with, "I see. Well I'll just get a cab then," my speech would have been given uptake conventionally associated with refusal. Audience recognition here involves an understanding of the words, context and the rituals and conventions typically associated with it. As the conversational participants, our understanding of the situation and what the relevant discursive conventions are, will be determined by the ideas that we form about appropriate responses, given our beliefs about the relevant conventions. Our phone conversation began with your request. I then understood (in this case) that such a speech act usually requires or calls for a response in either the affirmative or the negative. If I utter the words, "Yes, I will come pick you up," then there is a certain set of conventional responses that you may typically choose from—given that you have a similar understanding of the discursive conventions at play. Similarly, there is a different set of conventional responses that you may (or may not) choose from. For example, if you understand that my, "No," is a refusal, you will need to find another way home. If you hang up and arrange for a cab instead, then my utterance has the performative force of a refusal. If you simply hang up and don't say anything in response, I may not necessarily know what the performative force of my utterance turned out to be. I may be able to guess in this case or may find out later (when you arrive home in a cab or if you call at 12:30 wondering where I am). If, however, you respond with, "Thanks! I will see you at 12:30," I will find out that I have not in fact refused.

On the view of Hornsby and Langton, however, uptake is what Kukla describes as an entirely separate, "contingent subsequent event."<sup>115</sup> Uptake for them is the audience's recognition of the speaker's intention. Furthermore, Hornsby and Langton have the recognition of the speaker's intended illocutionary act in mind. As I noted in chapter three, Kukla believes that their account of uptake cannot be *exactly correct* if they want to maintain an Austinian view of speech acts. Though our solutions and reasons for thinking that Hornsby and Langton's account cannot be exactly right are different, Kukla and myself are at the very least suspicious of the utility of the illocutionary/perlocutionary distinction. In any case, Kukla's focus is on the effects of speech acts. For Austin, the forces and effects, at least according to Kukla, are achieved within the act of speaking. In other words, the effects of an illocutionary act are immediate. This means that if all the other necessary and sufficient conditions are met, and I utter, "I christen this ship the SS Boaty McBoatface," the ship is literally christened within the act of my utterance. Likewise, I have thanked you precisely when I have uttered, "Thank you." When I utter the words, given all our other conditions are met, the illocutionary act have been performed, and its effects have taken hold, on her view.<sup>116</sup> However, if we compare this account of illocutionary effects with Hornsby and Langton's hearer recognition account, there seems to be a tension of some sort, since this recognition is achieved after the speaker has finished her utterance. If recognition does occur after the utterance, then it seems to be a perlocutionary effect of the utterance rather than as an integral part of the performance of the illocutionary act. In other words, if Hornsby and Langton are correct, then the boat is not christened until *after I have finished my utterance, and someone has recognized my intention*. On this view, the boat is not christened in my utterance, but merely as a result of my utterance, which is at odds with Austin's claim that illocutionary acts are achieved merely *in speaking*. All of this, furthermore, is why Kukla wants to claim that Hornsby and Langton are not actually interested in illocutionary force at all.

As I have already mentioned, Kukla takes uptake to be a responsive action that puts into play various norms and conventions and subsequently provides an important part of the context for our utterances, that allows them to be an action of a specific kind. On Kukla's view, uptake is an integral part of a

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<sup>115</sup> Kukla (2014): 453.

<sup>116</sup> I think she overstates this point, but I will say more about this in the last section of this chapter.

larger contextual whole that our speech requires, for it to not only do various things but also to be actions in and of themselves. This all means that the conventions, norms and rituals are not instantiated until after the speech act has performed because the audience must respond before they can be said to materialize. It is partially because of this that Kukla does not use the language of illocution, perlocution and locution. Though she admits that this distinction does make some intuitive sense, she claims ultimately that it breaks down for the various reasons we have already discussed: the separation between perlocutionary acts and illocutionary acts seems to disappear when we look at uptake and its relation to the performance of an illocutionary act. Additionally, on Kukla's view, it seems that the effects of our utterances cannot be cleanly separated into illocutionary acts and perlocutionary acts.<sup>117</sup>

All this leads to Kukla re-describing the linguistic dysfunction—of which she takes Langton's cases illocutionary silencing to be a part—as discursive injustice, which happens when the loss of control of one's speech act is caused by an inability to (as Kukla puts it), “marshal conventions in a standard way.”<sup>118</sup> The result of this is a failure of agency that not only follows but also enhances social disadvantage (and to which those with less social power are especially prone). Of course this does not mean that those who have relatively more social power are in full control of their speech acts. Additionally, having more social power does not protect people from the queering of conventions. As Kukla notes, it might actually be the case that their power is what keeps them from marshalling standard conventions. For example, a wealthy, white celebrity may utter the words, “Black lives matter,” as an expression of protest and solidarity with black Americans who experience police violence, however perhaps because of the utterer's relative power and status (as white, as wealthy and as a celebrity), they may be taken as merely pandering to popular opinion. The difference, of course, between this case and those we have already discussed, is that the misfire here does not contribute to further undercutting the speaker's already disadvantaged social position. The speaker here has an advantaged social position. Now, it might be the case that we will want to discuss how some of these cases might erode or chip away at social power or privilege, or how discursive injustice might function in light of intersectionality (if, for example, the speaker is a wealthy woman or a queer, white man), and how discursive injustice might be compounded or especially damaging depending on the speech act attempted and the lines along which we are analysing social power. However, the point that Kukla is making here is that our celebrity is in an advantageous social position to start with, and though their speech act may be unjustly undercut because of their celebrity status, this does not cut away at their agency in a socially significant manner. This contrasts with our previous examples, where the speaker's capacity for self-rule is constantly being undermined in various unjust ways. In these contexts, the failure of performative force not only limits the individual's capacity to act in a certain way, but also serves to as proof to others' assumptions and beliefs that the individual is *less than*, in some general and deserved manner. While it is true that we are all in some way dependant on others to fix the performative force of our speech acts, it can be the case that the cooperation of others is not forthcoming for unjust or underserved reasons. It is the network of social norms and conventions that make speech acts possible, however this is accomplished limiting what all of us can do with our words. It is because speaking is, at its core, a collaborative task that it is also fraught with all the power relations that can be found in life more generally.

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<sup>117</sup> Kukla (2014): 454.

<sup>118</sup> Ibid.

### Section Three: Kukla, Scripts and Intra-Cultural Variation

In this section (chapter?), I re-analyze Kukla's example using the framework of scripts, and I show how the analysis sheds light on a range of cases involving racial oppression.

#### *Section 3.1 Celia*

The first case I will look at comes from Kukla's paper, just discussed in the above section. It concerns Celia, our female floor manager, and the difficulties of performing authoritative speech acts when stereotypes about gender and authority act to undermine the success of said speech acts. I will begin by providing the details of the example, given by Kukla (2014), before moving on to briefly recount Kukla's assessment of the way in which the performative force of the utterance is queered in such a way as to both frustrate Celia's perlocutionary goals, and undermine any further attempts by Celia to assert her authority. I will then provide my own assessment of Celia's case before moving on to discuss real-world cases that deal with race as well as gender.

##### *3.1.1 Case Details*

To review: Celia is a floor manager at a heavy machinery factory. Men account for 95% of Celia's employees. As the manager, Celia has the authority to tell the employees what to do, and she issues "straightforward, polite locutions to tell her workers what to do."<sup>119</sup> She issues these orders with phrases like, "Your short break will be at 11:00 today." Despite this, compliance is very low, and her employees call her a "bitch".

##### *3.1.2 Brief Review of Kukla's Account*

Kukla starts by conceding that it very well might be the case that her employees are just outright sexist, and intentionally ignore her orders. This is no less horrible, but it won't work for Kukla as a case of discursive injustice because Celia's utterance succeeds in having the performative force of an order. There is no 'queering of the path' between pragmatic inputs and pragmatic outputs. Her employees understand that she has the authority to issue orders, and that when she utters things such as: "Your short break will be at 11:00 today," she is ordering them to take their ten-minute break at a certain time. The employees in this situation are like the rapist in Langton (2009) who understands that the woman has refused his sexual advances and chooses to ignore it, and do as he like.

Kukla wants to put forward an account that is more nuanced and, as a result, more interesting.<sup>120</sup> Even though Celia is entitled to issue orders and has followed all the necessary steps to do so, her utterance fails to have the performative force of an order, because she is a woman. This leads Celia to being understood as performing a request instead of an order—her gender gets in the way of her intended speech act. This is a problem for Celia for two reasons: if she is taken as performing a request there is an entirely different set of conventions and norms of behavior attached to the speech act than if it was an order. Crucially, and as Kukla points out, "granting a request is never obligatory."<sup>121</sup> And, if the request is granted, conventions call for an expression of gratitude. The same cannot be said of orders. Kukla states that "orders are designed to impute obligations to follow them."<sup>122</sup> Furthermore, Kukla adds that if one follows compliance of an order with an expression of gratitude, the utterance's status as an order is undermined.

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<sup>119</sup> Kukla (2014) 445.

<sup>120</sup> Ibid.

<sup>121</sup> Kukla (2014): 446; I'm not sure if I want to commit to this claim wholly. I suspect there's more room for a grey area than she is allowing for in this quote.

<sup>122</sup> Kukla (2014): 446.

There are two main claims underpinning Kukla's analysis here: (1) that requests are more than just "weak orders" and (2) that performative force is determined by a situated, social narrative and normative relationships, of various kinds. With regard to requests, specifically, Kukla points out that requests have their own "distinctive pragmatic structure."<sup>123</sup> If you order me to let the cat out, you are ostensibly placing an obligation (to let the cat outside) on to me. Requests, by contrast, are designed to make it clear that the request is a legitimate move to make, while at the same time allowing the addressee to refuse.<sup>124</sup> Kukla's point in presenting Celia's case is to present an example of gender (a dimension of Celia's identity over which she has no control) not only frustrating the performative goal of the utterance, but also undermining her ability to manage employees. She does all the work required to successfully be taken as giving an order, however her gender (real or perceived), undercuts her ability to be taken as such. As a result, she is understood by her employees as making a rather rude request. She is perceived as being rude, because *it is very rude* to make a request of someone, by presuming already that they will do it, and even more rude to not express any gratitude after the fact. She doesn't say "thank you" when the employee goes to lunch at the requested time, because she believes she has given an order, and as such is obliged to the norms of behavior associated with imperatives, rather than with requests.

On (2): Because Kukla commits herself to the claim that the performative force of an utterance is determined by "the way her act, in all its material texture, is situated within a social narrative that takes place in a context that is structured by normative relationships," even if Celia employs the standard conventions for an order, her lack of practical authority will turn her utterances to requests. Of course, this also means that if a man takes Celia's place, the shift of context and normative relationships will very likely allow for either "Your break will be at one," and "Would you mind taking your break at one?" to be understood as orders. Celia and her male counterpart may put in the exact same pragmatic input and yet, merely as a result of gender norms and their relationship to authority (and its impact on the relationship between the manager and employees), affects the pragmatic output in a significant way.

### 3.1.3 Missing or Conflicting Scripts: Gender and Authority

The first point I would like to touch on, before discussing cultural scripts on gender and authority, is Kukla's discussion of imperatives and requests. Specifically, the role of "normative relationships of authority" and the way they are situated in what Kukla calls, "a social narrative".

If we look back at Wong (2004), we might want to point out here that regardless of the speaker's gender, bare imperatives (in a Western context) will likely be considered rude. If Wong (2004; 2005) is right in his claims about Anglo-Saxon values—and specifically about norms surrounding a speaker's recognition of a fundamental right to do otherwise, then "Take your break at one," very likely will be considered to be a violation of a Western/Anglo-Saxon culture-specific norm of behavior. This is why the conventional way to give an order like this, in most Anglo-Saxon contexts, will be more like "Would you mind taking your break at one?". Of course, this doesn't necessarily mean that Celia isn't still subject to discursive injustice. Since Kukla wants to use the manner in which the speech act is "situated within a social narrative...[in a context] that is structured by normative relationships...[and] a network of discursive conventions and social rituals," the cultural norms of behavior are not only going to shape the performative force of the utterance, but also will allow for the same word choice to constitute different speech acts, each with a different performative force *depending on who is speaking*. Ultimately what this means is that if a (white) man utters:

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<sup>123</sup> Kukla (2014): 446.

<sup>124</sup> Ibid.

“Would you mind taking your break at one?” in the same context as Celia, he can (and likely will) be understood as issuing an order. Conversely, if Celia utters either: “Would you mind taking your break at one?” or “Your break will be at one today,” she will be taken as performing a request. Her utterance will either be taken as a polite request, or a rude one, but either way her authority will be undercut. If she follows the conventions associated with making a request, this will make her employees difficult to manage (since acquiescing to a request is optional) and will confirm to the workers that she doesn’t actually have the authority to issue orders. Of course, if she attempts to issue an order, as already noted, she will come across as rude because she will not follow the prescribed social behavior for making a request (there will be no showing of gratitude, for example).

Celia’s male counterpart, however, may be able to leverage the association between masculinity and authority, in order to minimize the effects of going against prescribed norms. I suspect that though he may come across as cold, or standoffish, the male (especially the white, straight, and cis gender male) will be able to spin his use of the bare imperative as ambition, or a sign of authority. If he chooses to use the interrogative-imperative, it seems as though he may be both understood as issuing an order, and as doing so graciously. The employees may understand more readily that the utterance (“Would you mind taking your break at one?”) as an order and that the option to decline, was merely perfunctory.

There is one guiding point that Deborah Cameron (2007) makes in *The Myth of Mars and Venus*, that will be important to keep in mind while we look at the relationship between language use and perceptions of language use (both of which have an important relationship to cultural norms and beliefs), is that one language tool may serve many functions, depending on the context. This includes, importantly, what the role of the speaker is, in the conversation. Both Cameron (1997; 2007) and, Eckert and McConnell-Ginet (2004) point out that people playing the facilitator role in a conversation were more likely to use tag questions, for example, and that this often meant that the people using them were either television presenters, and doctors, among others. It was, as Cameron (2007) points out, a common belief that tag questions were a particular mark of feminine speech. More specifically, it was thought that it was part of the way in which women conformed to subservient behavioral norms. These later studies also found that use of tag questions didn’t necessarily track social power. (And, in fact those who used tag questions the most in certain situations often were the people with relatively more power.) This is something that we will need to keep in mind when discussing all three of the cases.

In discussing cultural scripts, Anna Wierzbicka (one of the linguists we discussed in chapter four) points out, crucially, that:

In any given speech community, it is widely assumed that there are good and bad ways of speaking, just as there are good and bad ways of behaving, and although not everyone has to agree with these assumptions, everyone is familiar with them because they are reflected in the language itself.<sup>125</sup>

It’s these limits—of what the community assumes is, “good and what is bad to do—and what one can or cannot do,”<sup>126</sup> that I believe undermine the addressee’s ability to understand what certain speakers are up to with their words. It is this aspect of cultural scripts that makes them particularly useful in understanding how and why someone may fall victim to illocutionary deafening. In some cases, I

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<sup>125</sup> Wierzbicka, A, 2002. Russian Cultural Scripts: The Theory of Cultural Scripts and Its Applications. *Ethos*, 30.4, 402.

<sup>126</sup> Ibid.

propose that some speakers attempt to perform actions that fall outside of the bounds of these culturally bound and communally made assumptions.<sup>127</sup> This is especially the case with situations such as Celia's: her attempts to use her formal authority to perform directives—something that she is both entitled to, and required to do, as a part of carrying out her job duties—falls outside the culturally accepted range of behavior for someone with her gender identity (a problem that no doubt would be compounded if she were a person of color, disabled, etc.) This is despite being explicitly required to issue orders by her employer. Issuing an order or directive with authority, as a woman in this particular context, seems to fall outside of what her interlocutors take to be appropriate behavior. If we take seriously Kukla's suggestion that these employees are not just outright sexists, then we need a reason why someone might not understand Celia as issuing directives. Cultural scripts, I believe, provides us with such a reason. Issuing a directive on the factory floor of a blue-collar job site is outside the acceptable range of actions for women. This provides justification for suggesting that there may be a gap in the shared (culturally-bound) interpretive resources. More specifically, that issuing an order in a blue-collar setting (though this may equally be the case in other professional settings more widely) has implicit norms of interpretation for women in the workplace: namely, that women do not belong there. This puts Celia as a *de facto* guest—someone whose presence is merely tolerated, and more like a tourist than a genuine part of the sub-community. This, along with the norms of expected female speech behavior we discussed in section one of this chapter, combine to produce the kind of dysfunction we see in Celia's case. It's not as if there aren't cultural scripts for performing directives as a woman, and in many contexts Celia's addressees may be perfectly equipped to understand her speech acts. In what follows I will present three scripts that I hypothesize may articulate and explain the kind of interpretive breakdown Celia's addressees are subject to. These scripts, in addition to the ones we will discuss the other two examples, are interrelated.

**Script One:** This script comes directly from Wong (2004) and, as he states, expresses a general culturally-bound preference.<sup>128</sup> The subsequent scripts will be related sets of cultural preferences of behavior, associated with directives and gender. Some of these preferences will be unconsciously held propositional attitudes and some will be implicit cultural norms that reflect consciously held beliefs and attitudes but that are not part of the explicit rules or conditions of performing the speech act in question.

[people think like this]

When I do something, it is good if I do it because I want to do it.

Not because someone else wants me to do it.<sup>129</sup>

**Script Two:** this script is meant to articulate a related preference. "If a person says this to me, I will feel something bad," indicates a violation of norms, and its related, negatively valenced mental states.

[people think like this]

If a person wants me to do something, it is good if they don't say to me:

"You cannot, not do it."<sup>130</sup>

If a person says this to me, I will usually feel something bad.

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<sup>127</sup> This is, of course, not to say that these norms and assumptions can't change, and in fact these "conversational routines" will change as the ways of thinking that underpins them change.

<sup>128</sup> Wong (2004): 234.

<sup>129</sup> Ibid.

<sup>130</sup> This formulation (of a double negative rather than an affirmative) is used frequently by both Wong (2004) and Wierzbicka (2002) as a way to indicate obligation.

At the same time, when I am at work sometimes I will be asked to do something that I cannot, not do.  
If a person says to me:  
“You cannot, not do it” and this person has authority over me, I will do what they want me to do.

**Script Three:** this script is implicitly at work<sup>131</sup> in this situation. Its aim is to explain women’s outsider status in the workplace, and to demonstrate that issuing directives while female is outside of the realm of possible linguistic behaviors that are culturally acceptable and appropriate.

[people think like this]

Women do not have authority over me at work.

If a woman wants me to do something, it is good if they don’t say to me:

“You cannot, not do it.”

If a woman says this to me, I will feel something bad.

At the same time, if a woman says this to me, she should feel something bad.

### *Section 3.2 Dontadrian Bruce*

To see how this sort of analysis can illuminate cases of racial linguistic injustice, I turn now to the case of Dontadrian Bruce.

#### *3.2.1 Case Details*

Dontadrian Bruce posed for a photo with some classmates and the group’s finished science project: a double helix built out of Lego. In the photograph, taken by a teacher, Dontadrian is holding up his thumb, index, and middle finger, with his palm facing outwards. Dontadrian is an African-American, who at the time (2014) was a student at Olive Branch High School, in a city just south of the Tennessee and Mississippi border (on the Mississippi side).

Three days after the photo was taken, Dontadrian was called out of a first-period English class to one of the school’s three assistant principals’ offices. Todd Nichols (a white man), informed Dontadrian that he was being put on suspension because the hand gesture in the photo taken the previous Friday was a gang sign. It is unclear from reports of the incident, precisely how school administration was made aware of the photo (whether it was posted to social media, for example, or if the teacher who took the photo brought it to their attention directly). Regardless, Nichols told Dontadrian that the hand sign was one used by the Chicago-based Vice Lords, which has a robust presence in areas of the deep south, to signal affiliation with the gang.<sup>132</sup> The student quickly explained that not only was the hand sign meant to show his football jersey number, but that he had no idea that it was used by the Vice Lords. Dontadrian told Nichols that many of his teammates also used their hands to sign their jersey numbers.

Three days following his suspension, Dontadrian and his mother, Janet Hightower, appeared at a disciplinary hearing where it was recommended that he receive a punishment of, “indefinite suspension with a recommendation of expulsion”. Hightower told reporters that her son usually receives excellent grades, and that he usually lets her know via text what he is up to: “He’s a good child,” she said, “I know what he does 24 hours a day. If he leaves home and goes two houses down, he’s gonna let me know.”<sup>133</sup> Twenty-one days after his initial suspension, involving student protests,

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<sup>131</sup> Pun unintended.

<sup>132</sup> The Vice Lords are reported to have a particularly heavy presence in Memphis, Tennessee, which is a twenty-minute drive from the city of Olive Branch.

<sup>133</sup> Aronowitz (2014): 1



pressure from supporters on social media, and traditional media attention—not to mention a lot of advocacy by Hightower, on her son’s behalf—Dontadrian was allowed to return to school. The school has told news reporters that they consider the matter closed. Dontadrian and his mother are now working with the ACLU in order to make sure that the incident doesn’t interfere with any of the student-athlete’s future plans.

### *3.2.2 Illocutionary Deafening and Racially Biased Scripts*

The policy commonly cited in news reports, as justification for Dontadrian’s exclusion from school is “Zero-tolerance”: a practice introduced by a 1994 act to address gun violence in schools. The practice advocates that students be given expulsions and suspensions for gang-related activity even if the infraction is not serious. The justification for excluding Dontadrian is, as I hope to show, a convergence of mistaken beliefs about gang-related activity, gun violence and mass murder, anti-black racism and misguided policy in the American public-school system. All of this can be articulated with scripts, that I believe provide a robust picture of how a well-behaved, high-achieving black teenager would be thrown out of school for behavior that seems to many, as innocuous. It is these scripts that keep the white administrators from being able to understand Dontadrian’s speech act as what it is: a showing of school pride.

#### *3.2.2a A Brief Note on the Geographical History:*

Any time there is a discussion of race, especially when it involves anti-black racism in the United States of America, the history of the subjugation of black people must be considered. Though this is true of many places throughout the country, it is especially the case when discussing unjust treatment of African-Americans in the American south east. Mississippi, the state in which our case is located, is not just a former slave-state, but one of a handful of states that gave the saying, “being sold down the river” its meaning. Slaves would literally be sold further south along the Mississippi and Ohio rivers as a punishment, since the deeper south one went, the more brutal the treatment of slaves became. On top of this (and, perhaps because of it), Olive Branch is only about a three-hour drive from Pulaski, Tennessee—the city in which the Ku Klux Klan was founded. The point here is that racism—especially against African-Americans-- is deeply entrenched in the history and culture of the white American south east. This is not to say that racism is emblematic of the area, or even that a majority of white Americans in this area are racist. Nor is it meant to suggest that in free (non-slave) states, there is no history of racism. The important thing here is to understand that there is a long, complicated history of white authorities oppressing black people, which is salient to a discussion of white school administrators expelling a fifteen-year-old black boy because they suspect he may be a gang member.

#### *3.2.2.b Mass Shootings, Gang Homicides and Racialized Hyper-Aggression*

The main justification for excluding Dontadrian from school was the assumption that he was signaling his affiliation with a gang. It would, presumably, be a bad thing to have a gang member in a classroom. However, exactly *why* it would be bad to have someone in a gang, attending any school (public or otherwise), is not quite clear. In the main NBC article about the situation, several experts on managing gang violence, and preventing the school-to-prison pipeline (the term for the phenomenon of kids being unduly punished for minor infractions by being kicked out of school, which often leads children of color to high-risk behaviors that put them in prison), disagree about what kind of intervention is appropriate if a student is found to be a gang member. Some believe in keeping kids in schools and making sure their time is occupied is a more appropriate measure, that benefits the children and the community, while others think that gang members pose a risk to their classmates in

the form of distraction (though what is precisely meant by “distraction” is not clear), that puts already at-risk students at an even greater disadvantage.<sup>134</sup>

I will not attempt to address what the appropriate response should be, to finding out that a student has a gang affiliation. What I will do instead is look at what the risk of gun violence might be, according to studies reported by *Mother Jones* and a Center for Disease Control (CDC) report on gang-related homicides. If we look back at the justification for no-tolerance policies in schools, it is clear that it was first aimed at keeping public schools free of gun violence. It seems plausible that the administrators’ aim in suspending and then expelling Dontadrian, was to keep the other students, safe. In what follows, I will present some statistics on what kind of violence gangs usually commit, before moving on to look at the likelihood of a someone in Dontadrian’s demographic (young and black) being a school shooter. I hope to show that 1) **even if** he was part of a gang, that he is much more likely to be a victim of gang violence than a perpetrator, and 2) overwhelmingly, the most dangerous demographic, in terms of mass murders in public places, is someone in Nichols’ demographic (white and male). My aim in doing these things is to present the stark contrast between **public perception of who is dangerous**, and the people **who are actually dangerous**.

In January of 2012 the CDC published a report on gang homicides, which used data collected between 2003 and 2008, in Los Angeles, Oklahoma City, Long Beach, Oakland and Newark.<sup>135</sup> Among these five cities, there was a total of 856 gang-related homicides, and 2,077 non-gang-related homicides. The CDC defined gang-related homicides as, “homicides reported to have been either precipitated by gang rivalry or activity or perpetrated by a rival gang member on the victim.”<sup>136</sup> In all five of the cities, the victims of gang homicide were much more likely to somewhere between 15 and 19 years-old. Men were much more likely to be victims of homicide, generally (80%), men were overrepresented in gang homicides in Los Angeles, Oklahoma City and Newark. Across these cities, the victims of gang homicides Oakland and Los Angeles had more Hispanic victims than other ethnicities, while Oklahoma City had more “non-Hispanic black” victims of gang violence.<sup>137</sup>

What does this all mean? It means that if you are young, male and a person of color, you are much more likely to be a victim of gang-related homicide. The CDC states that, “the results...indicated that, consistent with similar previous research, a higher proportion of gang homicides than other homicides involved young adults and adolescents, racial and ethnic minorities, and males.”<sup>138</sup>

The report does not include what populations are more likely to commit the gang-related homicides. However, the CDC notes that the homicides are usually between gang members, which may indicate that the race of the gangs in the area will determine who is doing the killing and who their victims are. If the gang-related homicides are committed against young men of color, it is very likely that the perpetrators are also young men of color. And though this may seem to justify the Olive Branch High School administrator’s actions, you don’t have to look much further into the CDC report to understand why it is very unlikely that two gang members would choose to commit a homicide in school:

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<sup>134</sup> 2014. School Spirit or Gang Signs? ‘Zero Tolerance’ Comes Under Fire. NBC News, 9 March 2014 [Accessed on: 17 February 2017]

<sup>135</sup> These were the cities that had a high enough gang homicide rate to be included, that also used the National Violent Death Reporting System (NVDRS).

<sup>136</sup> CDC. 2012. “Gang Homicides: Five U.S. Cities, 2003-2008. *Morbidity and Mortality Weekly Report*. Vol. 61 (3). p. 46.

<sup>137</sup> Ibid.

<sup>138</sup> CDC (2012): 46.

In at least three of the five cities, gang homicides were significantly more likely than nongang homicides to occur on a street and involve a firearm...[and] were most likely to occur in the afternoon/evening hours in the majority of the five cities.<sup>139</sup>

What does this mean? It means that if someone in a gang is going to murder someone, they are very likely to use a gun, but that the person they are going to kill is probably going to be another gang member, who will die on the street and NOT in a school setting. In short, “Gang homicides are quick, retaliatory reactions to ongoing gang-related conflict.”<sup>140</sup>

Finally, before moving on to discussing mass murders—of which school shootings are a part—I would like to touch on a finding that the editor of the *Morbidity and Mortality Weekly Report*—Sarah Rasmussen—touches on, in an editorial note:

The finding that gang homicides commonly were not precipitated by drug trade/use or other crimes in progress also is similar to previous research; however, this finding, challenges public perceptions on gang homicides. *The public often has viewed gangs, drug trade/use, crime and homicides as interconnected factors*; however, studies have shown *little connection between gang homicides and drug trade/use and crime*. Gangs and gang members are involved in a variety of high-risk behaviors that sometimes include drug and crime involvement, but gang-related homicides usually are attributed to other circumstances...Overall, these findings support a view of gang homicides as retaliatory violence. These incidents most often result when contentious gang members pass each other in public places and a conflict quickly escalates into homicide with the use of firearms and drive-by shootings.<sup>141</sup>

Rasmussen points out here that the public perception of gang activity is much more grandiose than what the reality of the situation is. Do gangs and gang members participate in “high risk” behaviors such as theft, drug use, drug trade, and sex work? Yes. However, for the most part the homicides committed by gang members have little to do with that behavior and more to do with the politics of gang life. There was absolutely no mention of a gang member/members walking into anywhere, let alone a school, and opening fire. Additionally, nongang homicides were slightly more likely to result in the death of a bystander than gang homicides. This means that even if Dontadrian *was* throwing a gang sign, and/or also a member of a gang, it is extremely unlikely that he would commit an act of violence in school, and even more unlikely that non-gang members would be at risk. The fact that gang homicides most often occur on the street, between other gang members, seems to suggest that it might be more advantageous for the administrators to keep these students in school, thereby reducing their exposure to the risk of death.

I will now move on to discussing mass murders. Because Olive Branch High School and district administrators cited that Dontadrian’s removal from school was a matter of safety, it will be useful to look at the phenomenon of mass shooters in American schools—this is especially the case since zero-tolerance policies were largely adopted in response to high-profile school shootings. The Gun-Free Schools Act of 1994 tied federal funding for public schools to the existence of anti-gun laws: states would need to adopt laws that mandated at least one year of suspension for any student found in the

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<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> CDC (2012): 48-49; emphasis added.

possession of a firearm on school property.<sup>142</sup> The states were permitted to determine the specifics of implementation, however, it also specified that the state policy put in place a mandatory procedure of “referral to the criminal justice or juvenile delinquency system.”<sup>143</sup> The justification for this law is—perhaps obviously—to make sure that children and teenagers stay safe while getting an education. Whether or not the law was successful in its goal is largely beside the point. What is important to understand here, is that the United States of America has a long history of school shootings, and that like President Bill Clinton, signing the act into law, school administrators implement zero-tolerance policies in an effort to keep everyone safe.<sup>144</sup> This, of course was the explicit justification given to Dontadrian and his mother. The school was just trying to keep a calm environment, where students could focus on learning. They thought he was flashing a gang sign, gang members, do in fact carry guns (as we discussed above, firearms are their weapons of choice when committing gang homicides), and guns in schools lead quite frequently to death and injury.

Of course, there is an issue with this logic, as gang members are not prone to either, a) committing homicides of non-gang members, or b) committing homicides in schools. This latter point is supported by the CDC report, which supported the idea that most gang homicides are committed in the street, and usually don’t qualify as mass shootings (which is commonly defined as four or more people being killed). This leads us to another question: what demographic is more likely to carry out a mass school shooting? In an analysis done by *Mother Jones*, which looked at U.S. mass shootings from 1982-2017, white people are overwhelmingly more likely to commit such acts, and specifically, white men. According to their analysis, since 1982, 63% of all the mass murders involving a firearm, were committed by white men. On the whole, men commit 90% of all the mass shootings, while women (of any race) made up only about 10% of that. African-Americans accounted for 16% of the mass murders (which is about proportional to the percentage of the general population they make up).

The fact of the matter is that white men are more likely than any other group to walk into a school with a gun and use it to kill people. African-Americans, especially young male African-Americans, are more likely to be victims of gun violence—especially if gangs are involved. Gangs, of any race very rarely kill non-gang members and usually don’t commit homicides while engaging in any of the behaviors that the public think of when they say, “gang activity”.

### 3.2.2.c Racialized Scripts: Perceived Hyper-Aggression and Bias

In this last sub-section, I will discuss the possible mechanism through which school officials came to the decision that Dontadrian was signaling gang affiliation (rather than his football jersey number). As I have already noted, zero-tolerance disciplinary policy is cited as contributing to Dontadrian’s exclusion. In what follows, I will explain the way in which the racialized scripts that the white, school officials implicitly ascribed to, undermined their ability to understand Dontadrian’s speech act.<sup>145</sup> Furthermore, it can be argued that of the three examples, Dontadrian’s case seems to not only be subject to the version of linguistic injustice that I am interested in—illocutionary deafening—but that this breakdown in communication undermines and further disadvantages Dontadrian in a similar manner to Kukla’s discursive injustice. This seems especially clear when Desoto County School District officials considered the matter ‘closed’ once the student-athlete was allowed to return to

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<sup>142</sup> United States Department of Education. 2004. LAWS & GUIDANCE ELEMENTARY & SECONDARY EDUCATION Subpart 3 — Gun Possession. [ONLINE] Available at: [www2.ed.gov](http://www2.ed.gov). [Accessed 17 May 2017].

<sup>143</sup> Ibid.

<sup>144</sup> This, of course is giving the administration the benefit of the doubt. I am sure there are exceptions.

<sup>145</sup> As Austin cites that speech acts are a subset of the larger category of actions, *and* that varieties of sign language are taught and ‘spoken’ just like any other language, I am here going to categorize Dontadrian’s gesture as a speech act, even though it was non-verbal, in the conventional sense.

school. Dontadrian and his family mentioned to the NBC reporter that even though he was invited back to school, they would have to fight to make sure that the incident didn't follow Dontadrian the rest of this life (keeping him from accessing higher-education, and/or putting him on the school-to-prison pipeline, for example). This seems like a tangible instance of one of the qualities that Kukla emphasizes in her account of discursive injustice. Like Celia, the failure of his audience to understand the kind of illocutionary act Dontadrian intends, in particular that his gesture was taken to be a signal of gang affiliation, contributes to the further undermining of his credibility (it confirms that black, male bodies are largely violent gang members), and that he now has a disciplinary record very well may interfere with his future in a significant manner.

Of course, school officials claim that the decision to take Dontadrian out of school, was not based on his race, but based on the fact that the hand signal was identical to one used by the Chicago-based Vice Lords. Dontadrian and his family, on the other hand, clearly point out that the accusation would not have been made if Dontadrian was not a person of color. Why might this be? An easy answer is to say that the largely white, school administrators are lying and really are blatant racists. This, I believe, is neither an interesting answer, nor the most plausible one. What I hope to show, is that Zero-tolerance policies and implicit biases, based on unconsciously held racial attitudes, led to the school administration's decision. The implicit biases, informed by prejudicial cultural scripts, allow for a situation where a student is taken out of school without question, while also giving us the ability to understand the fact that the white school officials (at the very least, though not necessarily excluding non-white officials), may sincerely report that they did not (nor or ever do) take the race of the student in consideration.

While one certainly would hope that disciplinary actions are the result of careful, well-considered responses, I believe that the zero-tolerance policies create a culture of "suspend first, ask questions later" which discourages the use of discretion when disciplining student. I believe that because of this, school officials are put into the position to be making much quicker decisions, where implicit biases frequently effect such decisions—especially when the people in power are white and the person speaking or acting is not white. What the assistant principal saw when he looked at the photo of Dontadrian, was visual evidence in favor of an already existing cultural script: *the hyper-violent black male*.

The white school administrators did what I believe Deborah Cameron's student did when he only attended to the themes of discussion that supported his pre-existing beliefs: both the administrators and Danny saw what they expected to see, and used stereotyped, false narratives as justification for doing so. In what follows, I will examine the operative cultural scripts that the school administrators used to interpret Dontadrian's speech act. I will also employ a concept that Jeffery Fagan and Amanda Geller introduce in their 2015 paper, "Following the Script: Narratives of Suspicion in 'Terry' Stops in Street Policing": scripted suspicion. Their main argument is the rise of quotas and popularity for police tactics such as "broken windows policing" (where small infractions are aggressively punished) and the loosening of constitutional standards through Fourth Amendment jurisprudence narrows the number of incidents in which officers can choose to not take action. This in turn, leads officers to rely more and more on their own 'gut' feelings and this, in combination with the pressure to prevent crime results in the reliance upon certain narratives of suspicion. These "narratives of suspicion" lead to what I will call, "scripted suspicion": a perception of unease or danger, that is founded, at least in part, on biases, stereotypes and shared (mostly false) narratives and cultural norms.

Fagan and Geller (2015) analyzed 4.4 million stops made by NYPD officers between 2003 and 2012<sup>146</sup> which revealed narratives of suspicion that was, “beyond the idiosyncrasies of the individual case that police used to justify their actions.”<sup>147</sup> In other words, the researchers believed that the data revealed the way in which social conditions shaped how the stops were justified by the officers. The NYPD used the form below (figure 1) to articulate why the person was stopped, and the relevant details of the stop.

Figure 1:

The authors found that there were identifiable narrative patterns that, “evolved into shared narratives or scripts of suspicion, and that these patterns are specific to suspect race and neighborhood factors.”<sup>148</sup> Because scripts play a role in the way we organize our everyday experiences, they are potent tools for trying to predict the behavior of others, and assessing potential danger.<sup>149</sup> The similarity between Dontadrian’s case and the cases discussed by Fagan and Geller (2015) is that the audience are put into a situation where they are not permitted to exercise as much discretion as may be ideal. Proactive policing, the practice of trying to prevent crime, has resulted in the de-individualization of suspicion and in racial and geographical profiling. Individualization is important to reasonable search and seizure, because it encourages law enforcement to focus on specific suspects in specific crimes. For example, if a crime victim describes the assailant as a black man who was 5’ 9’ and had a distinct limp, officers would be on the look-out for someone matching this description. If an average-height black man was limping down the street towards an officer, the suspicion that the officer has of the man may be called *individualized* because there is a particular person suspected of a particular crime. This, of course, does not mean that the justification “fits description” is not abused or used by officers in order to wrongly justify a stop, but merely that it is far better to use a description that individualizes more, rather than one that applies very broadly.

Like police officers in the era of proactive policing, zero-tolerance policies narrow the range of instances where school administrators are permitted to use discretion. The same culture that pressures

<sup>146</sup> Fagan and Geller (2015): 51.

<sup>147</sup> Ibid.

<sup>148</sup> Fagan and Geller (2015): 51.

<sup>149</sup> Ibid.

police to *prevent* crime, also pressures schools to prevent shootings and violence. This means that school officials are forced to rely upon a similar kind of scripted suspicion that takes drastic measures to preserve “safety”. This means that law enforcement and school faculty and staff are forced into a state of perpetual “high alert” that leads to reliance upon gut feelings where are very frequently informed by collective (and often false) narratives about danger. It is here that the Olive Branch administration employed racialized scripts:

### ‘Scripted Suspicion’

**Script One:** this is a basic, non-problematic script that the administrators may use in interpreting kids’ behavior.

[some people think like this:]

It’s cool to show school spirit.

At the same time, some people think like this:

It’s cool to show my gang affiliation.

**Script Two (a more problematic script that some administrators use):**

[mostly white students think like this:]

It is good to show school spirit.

**Script Three (another problematic script that some administrators use):**

[mostly non-white students think like this:]

It is good to be in a gang.

If I am in a gang, I should signal my [gang] affiliation

## Section 3.3 Derek Williams

### 3.3.1 Case Details

The precise sequence of events that led up to Derek Williams’ death on July 6, 2011 is unclear. Reports conflict across and within sources. Police officials claim that they approached Derek on the suspicion of armed robbery. That fact is not in dispute. Whether or not Derek was attempting to rob the couple he was near at the time, is unclear. In a February 13, 2013 report by John Diedrich recounts testimony by Derek’s girlfriend, Sharday Rose, and her step-father, Tyrone Mathias. Derek had been held by police for some unpaid tickets. (It is important to note here that Derek Williams had no criminal record.) After being released Derek went to see Sharday, their kids, and Sharday’s step-father. According to Tyrone, he and Derek left to pick up a few things from a nearby store. On their way, Derek noticed a couple walking down the street. Derek stated that he knew one of the two and ran over to greet the other man.

It is at this moment that police officers noticed Derek. Though none of the officers that were present (at either Derek’s arrest or death) made statements to journalist or to the inquest (a public presentation of the facts to a jury, by the prosecution to figure out if charges should be filed), Officer Zachary Thoms gave an account of events as officers understood them. Thoms states that Derek was observed “skipping” down the street in a ski mask, in the middle of the summer. Officers then saw Derek threaten the couple and lean in to them “as if he had a gun,” as Thoms put it, while testifying in court.<sup>150</sup>

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<sup>150</sup> Diedrich, J. “Police Officers Invoke Fifth Amendment During Inquest into Derek Williams’ Death” *The Milwaukee Journal-Sentinel*. (2013)

One of the couple, Sam Tooke, testified that Derek approached them in a mask and then proceeded to reach and ask for his wallet. Crucially, Tooke testified that Derek, “did not act as if he had a gun.”<sup>151</sup> The events between the police making their presence known and Derek’s arrest are equally unclear. What is certain is that police officers chased Derek down, and that he was found hiding behind a turned-over deck chair. One of the officers pulled Derek out of his hiding spot, where he was eventually put onto his stomach. At some point, either before or after he was handcuffed, Officer Richard Ticcioni put his knee into Derek’s back, and applied pressure, before ultimately putting him into handcuffs. There were fifteen minutes between the moment he was handcuffed and the moment he stopped breathing. He first brought his medical need to police attention when Officer Ticcioni still had his knee in Derek’s back, while handcuffed. How long Derek was face-down on the pavement is unclear, as Detective Luke O’Day testified that he had taken down Officer Ticcioni’s statement incorrectly.

Police originally had told the pathologist [Milwaukee County Assistant Medical Examiner, Christopher Poulos] that no force was used during the arrest. When interviewed by O’Day, however, Officer Richard Ticcioni said there was a struggle. O’Day’s report says Ticcioni “ended up on top of Williams with the suspect facing down.” On Thursday [the fourth day of the inquest], O’Day contradicted his report, testifying that Williams was actually facing up at the time...” There was a struggle. He ended up faceup [sic], and then they flipped him over and took him into custody.” O’Day testified.<sup>152</sup>

This about-face may be due the fact that positional asphyxia is such a high risk when pressing down on someone’s back while they are face-down that officers are forbidden from doing so by the Milwaukee Police Department, according to their official procedures.<sup>153</sup> Of course, in later testimony by an officer at the scene contradicts the department policy and the testimony by O’Day and Ticcioni, who stated that he arrives as Derek was being handcuffed, and that Ticcioni had his knee on Derek’s back, “Williams was lying face down [sic] and ‘attempting to move around,’ but not punching or kicking”<sup>154</sup> This officer, Craig Thimm, also stated that, “Putting a knee on a suspect’s back under those circumstances is consistent with police training. Regardless, the report by O’Day states that, “As soon as he released pressure, Williams began squirming, as if trying to break free, and reached around his right side to his right waistband (while still in handcuffs).”<sup>155</sup> This action apparently worried Ticcioni, who thought he might have a gun. The officer increased the pressure in his knee to Derek’s back, so that Derek could no longer move.<sup>156</sup>

Two officers then pulled Derek to his feet. Derek went limp instantly and had to be put back on the ground by Ticcioni, who according to O’Day’s report, “Observed him breathing hard.”<sup>157</sup> Derek fell to the ground a second time after one of the officers supporting him moved in order to clear a sign from the pavement. The report states that, “[Derek] pulled forward and fell face forward into the grass.”<sup>158</sup> This behavior was interpreted by officers as resistant. According to an early report in the Milwaukee

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<sup>151</sup> Ibid.

<sup>152</sup> Diedrich (2013)

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Barton, G. (2012a)

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.



Journal-Sentinel, “Ticcioni believed Williams was dragging his feet to make it difficult for the officers to get him to the waiting squad car.”<sup>159</sup>

Once Derek was in the squad car, he would only have eight minutes of his life left to live. Though the audio in the car’s recording system is poor, Derek can be clearly heard telling police officers that he is having difficulty breathing, and that he needs medical attention immediately. The officers that rotate in and out of the passenger seat of the squad car dismiss his pleas for help. In one section aired by Brian Reed, a journalist for National Public Radio, Officer Jeffery Cline can be heard speaking to Derek:

**Derek Williams (DW):** [inaudible]

**Jeffery Cline (JC):** What’s your last name?

**DW:** I can’t breathe.

**JC:** You’re breathing just fine.

**DW:** Believe me.

**JC:** What’s your last name?

**DW:** I can’t breathe, sir.

**JC:** You’re just playing games.<sup>160</sup>

Officer Cline eventually gets out of the squad car and lets Officer Jason Blechwehl take his place. By the time this happens, Derek has stopped speaking and is now slumped over in his seat. Blechwehl notices that Derek is unconscious and gets out of the car to look for a superior officer but doesn’t find one. Blechwehl returns to the squad car and pulls Derek out of the car. It is not clear what happened between Derek exiting the car, and the arrival of the superior officer. However, when Sgt. Robert Thiel arrived, he found Derek on the ground being held up by two unnamed police officers who were attempting to get a response from Derek. Sgt. Thiel had the officers put Derek on the ground. Sgt. Thiel testified that he tapped Derek on the cheek and noticed his face was sweaty. Derek responded to this by flinching, however he did not open his eyes. At this point Sgt. Thiel did not notice that Derek was struggling to breathe. He stated, “I asked him, ‘What’s your problem?’”<sup>161</sup> Derek responded by stating, “I didn’t do anything.”<sup>162</sup>

The medical examiner who originally performed Derek’s autopsy ruled the manner of death as “natural” and the cause of death as sickle cell crisis. Christopher Poulos (the medical examiner) had made this ruling before reading police reports or viewing the recording from inside the police cruiser. Poulos did interview officers, who told him there was no struggle or altercation before Derek’s arrest. Following an interview with outside expert Werner Spitz by journalist Gina Barton, Poulos changed Derek’s manner of death to “homicide”. This change prompted the inquest. Special Prosecutor John Franke was brought in by Milwaukee County District Attorney John Chisholm to preside over the

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<sup>159</sup> Ibid.

<sup>160</sup> WBEZ Chicago. (2015). This American Life. 547: Cops See It Differently, Part One. [ONLINE]. 15 February 2015. Available from: <https://www.thisamericanlife.org/radio-archives/episode/547/cops-see-it-differently-part-one> [Accessed: 16 February 2017].

<sup>161</sup> Barton (2013G).

<sup>162</sup> Ibid.

inquest because he had previously ruled on the case. The jury recommended that three officers involved in the death of Derek Williams should be charged with misdemeanors (“failure to render aid by law enforcement”). This is the first time in almost 25 years that an inquest jury has recommended charges against any police officer.<sup>163</sup> Ultimately the Special Prosecutor, John Franke, decided not to pursue charges against anyone connected with Derek’s death. The ruling by an inquest jury is merely advisory, and the District Attorney’s office is not bound by its decision.

### 3.3.2 Illocutionary Deafening and Matters of Life and Death: “I Can’t Breathe.”

The story of Derek Williams’ death is—on many levels—complicated. Many of the details are disputed. At the most fundamental level, Derek Williams is just one of a shocking number of deaths that have occurred in Milwaukee police custody, which is to say nothing of the deaths in police custody that occur nationwide. So many people of color die while in the custody of Milwaukee police, that the Milwaukee Journal-Sentinel has devoted an entirely separate webpage to documenting the issue. In Derek Williams’ case, there was a single thread that ran through the narrative put forward by police: “We thought he was faking.” You can see it in the portion of conversation I have already quoted above:

*“You’re breathing just fine.”*

*“You’re just playing games.”*

Even the police sergeant doesn’t believe him, despite the fact that he is lying unconscious on the ground. Sgt. Theil testified under oath that he asked Derek, “*What’s your problem?*” And one of the last things Derek ever says is, “*I didn’t do anything.*” In one of the final reports on the case, Gina Barton writes that, “Several other officers’ testified that people often claim to be sick to avoid arrest, a condition so common it has a nickname: jailitis.”<sup>164</sup> This is despite departmental policies already in place at the Milwaukee Police Department that state:

It cannot be overemphasized that members shall continually monitor and remain cognizant of the condition of a person in custody, especially when he/she is in restraints. The arrestee may encounter immediate or delayed physical reactions that may be triggered by the change in physical or environmental factors. Therefore, caution and awareness on the part of the officer is constantly required.<sup>165</sup>

This excerpt is from the Milwaukee Police Department’s **Standard Operating Procedures**. These procedures require officers to immediately call for help if medical attention is needed. Of course, the police can and have already claimed that they did not believe that medical attention was necessary. This, of course, is where cultural scripts become useful in analyzing what went wrong, besides the obvious.

In what follows I will present a few scripts tailored to the Derek Williams’ case, followed by a discussion of some of the issues raised by Fagan and Geller that I discussed in my analysis of Dontadrian Bruce’s expulsion.

#### Script One: ‘Criminal Mindset’

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<sup>163</sup> Ibid.

<sup>164</sup> Barton (2013G)

<sup>165</sup> Barton (2012B)

- 1A:** Some people think like this:  
 If I get caught taking things from others [or breaking the law], it will be bad for me.  
 Because of this, I should do everything I can to not get caught.  
 At the same time, if I do get caught, I will be arrested and taken to jail.
- 1B:** Because of this, it is good if I say something like this:  
 “I need to go to the hospital. I need help.”  
 Because of this, I will be taken to the hospital instead of jail.

**Script Two: “Scripted Suspicion”**

These scripts are the ones I propose police officers use to interpret the actions of others—especially in high crime areas.

- 2A:** [Some police officers think like this:]  
 It’s better to prevent crime before it happens  
 If I can prevent crime, it will be good for everyone and I will feel something good.  
 At the same time, if someone is in an area classed as “high crime” they are more likely to be a criminal.  
 Because of this, I should stop more people than I would in “low-crime” areas.
- 2B:** [some police officers think like this:]  
 If I see a non-white person, they are probably from a high crime area  
 If they are from a high crime area, they are probably a criminal  
 Because of this, I should stop them
- At the same time, criminals will do anything to avoid being taken to jail  
 Because of this, if a person from a high crime area says they need medical attention they are probably just lying

What these scripts are meant to articulate is the norms and expectations of the police officers. As we saw in Fagan and Geller (2015), being in an area classified as “high crime” can cause officers to behave in predictable ways that fit a shared narrative. This alone is not enough to merit concern. However, when combined with “modern police tactics” such as broken-windows policing, and stop-and-frisk, where demand for stops within the administrative structure of law enforcement is high and the standard for reasonable suspicion is lowered, officers are discouraged from using discretion to choose when to not act and are at the same time made to rely on ‘gut feelings’ which lead to biased perceptions of suspicion. These conditions encourage what Fagan and Geller believe, “encourages if not incentivizes or even demands,” that police officers stop and temporarily detain citizens on, “thin or subjective bases of suspicion.”<sup>166</sup> All of this means that the events that kicked-off Derek’s last hours of life, were very likely informed by scripted suspicion.

Fagan and Geller’s analysis of the use of scripts in policing practices helps us understand why there is a discrepancy between Sam Tooke’s testimony that Derek did not have a gun, and the testimony of the police officers (within the O’Day report and in the inquest testimony itself) that Derek appeared to have a gun. Police officers expected to see a gun in Derek’s jacket. Just as Dontadrian fit the false narrative of hyperviolent “gang-banger”, so too does Derek fit the false narrative of an average street criminal, willing to lie, steal and cheat to get ahead. The police officers clearly expected Derek to be

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<sup>166</sup> Fagan and Geller (2015): 53-54.

violent, to be a drug user (later reports claimed that drug paraphernalia was found on the seat of the police cruiser, though the autopsy showed only marijuana in his system). The officers expected Derek to have a gun, and to be a danger to their own lives. They viewed an interaction between a black man, and a white man. What they saw was an act of violence because that is what they expected. This isn't to say that all expectations lead us astray, but when police are always on alert and are expected to always act on any reasonable and articulable suspicion, it may result in the officers' being rendered unable to properly understand certain speech acts when they are uttered by certain people (African Americans, as well as other people of color) attempt to deploy the standard pragmatic resources. In scripts 1A-1C, we see the particular norms and attitudes articulated. 1A gives us a basic description of an assumption that may ground police officers' (though not exclusively police officers) opinion of what may constitute the "criminal mindset". Specifically, it is meant to describe what might constitute the attitude of a common belief of those considering theft. 1B and 1C, then articulates what might be understood as the norms of criminal behavior, as understood by—at the very least—the Milwaukee Police Department's understanding of the norms of criminal behavior, and by extension the norms of effective policing. The image of a rookie patrol officer, being warned about the tendency of criminals to suddenly develop some immediate medical need as a last-ditch effort to avoid jail. "Look kid, they're going to say they can't breathe but don't be fooled." Like the mantra uttered by the fictional MD, Dr. House that, "Patients always lie to their doctors," our world-weary detective may tell the rookie that, "Everyone lies to the police."

The difference between these, of course is that the latter expectation doesn't merely serve as a plot device, with which to advance a work of fiction. When "everyone lies to the police" can be deadly when what you think the speaker is lying about is their ability to continue breathing and, by extension, to continue living. "Jailitis" may be a clever term in the abstract, but as their very own *standard operating procedures* points out, someone who is being restrained may reasonably be found to be in respiratory distress without a moment's notice. The issue is so much the case that it was written into the departmental policy. This is completely separate, of course, from the department policy that was already in place that required officers to arrange immediate medical attention if there is a sudden change or if the person in custody requests it. This point is particularly worrying when considering the fact that then-Chief of Police, Ed Flynn, told NPR reporter, Brian Reed that the department, following the incident, made it compulsory to take anyone in their custody to the hospital if they tell officers that they need medical attention, no matter what.

## Conclusion

We began this chapter by taking a closer look at the usefulness of cultural scripts for illuminating the kind of pragmatic dysfunction that involves an addressee being undermined in their ability to understand what people from oppressed groups are doing with their words. This inability, as we stated in chapter three, was characterized by the inability to understand that the speaker was performing the utterance sincerely. My general goal in this chapter was to provide a plausible description of how addressees from (relatively) privileged groups could become unable to understand the speakers (of relatively less privileged backgrounds) on the basis that their intended speech acts fall outside the range of acceptable or expected norms of conduct for the speaker. We began by discussing work by Deborah Cameron and Eckert and McConnell-Ginet that explained how speakers can make use of different speaking conventions and practices in order to manage both the relationship between themselves and the content of their utterances. In other words, different speakers may use different locutionary acts to communicate (intentionally or not) how they feel about what they are saying. We also discussed what (if anything) this would reveal about the person's status (social, professional, or otherwise). The main concern here was that claims about social positions and discursive practices

require careful analysis, in order to avoid false (and often harmful) narratives about groups of people the way they speak. This was useful in two ways: 1) it allowed us to see examine cases of gender and intra-cultural variation of norms where there had been empirical research that could evaluate essentialist claims made when discussing gender and speech. 2) it gave us an example of how to understand why these differences seem ‘natural’ and provided useful terminology to understand the nature of illocutionary deafening as well as other forms of linguistic injustice.

Following this, we looked at Kukla’s paper on discursive injustice, where she dramatically shifts the terminology of Langton’s silencing schema away from illocutionary/perlocutionary/locutionary acts that are used to understand illocutionary disablement. She adopts a theory that is put in terms of pragmatic input and output and is concerned with “performative force” rather than illocutionary or perlocutionary force. Importantly, a key feature of Kukla’s “discursive injustice” is that it enhances disadvantage. This is a theme that has repeated itself throughout this thesis. People from oppressed groups are “damned if they do, damned if they don’t”. There is nothing that speakers we have discussed (Celia, Derek Williams, Dontadrian Bruce, women refusing sex, etc.) will be able to get their addressees to take them as sincerely performing the act they intended. Her development of the kinds of harm *on the discursive level* that comes to those who are confronted with illocutionarily deafened interlocutors is not localized to the particular utterances in questions. This, combined with the introduction and discussion of how to class different speech acts (e.g.: a ‘rude request’ vs. a polite imperative), that helps to bridge the gap between cultural norms and formal felicity conditions. From here, we turned our attention to three different case studies, in order to apply the cultural scripts and interpretive schema that we developed across the previous chapters. My goal here was to present three instances in which speakers were expected, and intended to adopt certain subject positions, through their speech, but because of shared cultural expectations, such positions were unavailable to them—which enhanced and perpetuated their subordination.

## Conclusion

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We started our analysis in chapter one, with Rae Langton's proposal for conceptualizing silence qua speech acts, with the goal of using it to understand and explain instances of unjust performative dysfunction. This included a situation in which a woman is unable to use her words to refuse a man's sexual advances, where the man is a consumer of a certain kind of pornography. Her overall goal in presenting and attempting to explain this kind of pragmatic breakdown, was to make sense of feminist anti-pornography arguments that called for the regulation of pornography on the basis of its silencing and subordinating powers. Specifically, Langton's goal was to provide liberal justification for the regulation of pornography, by appealing to free speech/First Amendment values on the basis that it deprives women of the ability to perform illocutionary acts of refusal by undermining men's ability to recognize women's utterances as such. We focused on her silencing claims (setting aside Langton's thoughts and arguments regarding how pornography might constitute the subordination of women) and discussed how Austinian speech act theory helped to demonstrate how a woman could still utter the word "No" and be said to have been silenced, in a literal manner. The distinction between locutionary acts, illocutionary acts, and perlocutionary acts provided an opening through which one might be able to understand that silencing, in a very real sense, is more than just the inability to make certain meaningful sounds.

In our second chapter, we took a look at the suggestion that the silencing of women's illocutionary acts of refusal should be a concern for a liberal state. Specifically, we looked at an objection to Langton's claim that (unjust) illocutionary disablement should be of concern to liberal theorists, on the basis that it limits women's ability to fully exercise their right to free speech. Daniel Jacobson charged that such limitations, however concerning they may be, are not the kind of thing the First Amendment protects, nor the kind of thing free-speech theorists have in mind when they argue for the protection of political speech. Jacobson went on to argue that (1) at the most, freedom of locution is protected under the First Amendment, and (2) if we were to concede that freedom to perform an illocutionary act of refusal was protected under such rights, then we would have to also have to allow for the protection of any illocutionary act one would wish to perform. He used J.S. Mill's position on what should and what should not, be protected speech by presenting Mill's example of a mob, on the verge of rioting. If an utterance such as "corn dealers are starvers of the poor" in a public meeting, or the like, then the speech is protected. It is only when such utterance become incitements to violence that they are no long protected under free speech laws. In other words, if someone shouts, "Corn dealers are starvers of the poor!" and the person is in front of an angry mob, just outside the home of a corn dealer, then that utterance is not protected speech. It is only when the utterance becomes a certain kind of action, that it loses its protection--when it becomes, in other words, a certain kind of illocutionary act.

Langton (with Jennifer Hornsby) responded to this by clarifying that Langton's original claim was not that there was or should be, a guaranteed right to perform any illocution one would wish, but that there are some illocutionary acts that a liberal state should value and protect, over others. She explained that on her view, when faced with two illocutionary acts that conflict in the way pornographic utterances and women's refusals do, we are faced with a choice: we can either choose to allow the illocutionary act of "constituting the subordination of women", at the cost of silencing women's illocutionary acts of refusal (of sex), or we can restrict or regulate the former, thereby facilitating women's ability to refuse on the illocutionary level. She claimed that it was more consistent with liberal values to allow for individuals' ability to maintain bodily integrity and decide for themselves who they have sex with, when they have it, and where--a right that Jacobson himself takes to be important.

I closed this chapter by attempting to present a way in which a liberal state might regulate speech, by suggesting that perhaps pornography should be treated more like commercial speech than political speech. This would provide an opening to regulate pornographic utterances, as commercial speech regulation does not require content-neutrality. In the end, I don't think the argument ultimately works, but I do think that there is an opportunity for further research here. Pornography is the product being purchased and/or consumed, which makes it difficult to argue for its regulation on commercial grounds. I do, however, think that there may be public health concerns which could provide the justification for the regulation of the product itself. In other words, like prescription drugs, medical equipment, and food, which are regulated to some extent or another, there may be public health and safety reasons to add mandatory debriefing messages to such pornographic material, or the like.

Following this consideration of the political implications of Langton's work, we moved on to chapter three, in which I provided a careful analysis of the fine-grained details of Langton's use of speech act theory. This largely consisted of a discussion of the role of audience uptake in the success of one's intended illocutionary act. Specifically, we investigated whether or not it made sense to require recognition of the speaker's intended illocutionary act as a condition of success (on the illocutionary level). We started with an example put forward by Jacobson, that was meant to demonstrate that uptake was not a necessary condition. We then looked at a response by Hornsby and Langton (1998), in which they contend that Jacobson's example does not serve as a real counter-example. Specifically, they assert that the illocutionary act of the speaker receives uptake, and therefore conforms to Langton's view (and Austin's, by extension). From here I presented the first part of my own positive theory. I contended that because ordinary speakers do not possess the concept "illocutionary act", in any form, when a hearer asserts that they "recognized that the speaker was refusing" they mean in a general sense that encompasses the successful gathering of relevant evidence to understand what the speaker was generally up to. Furthermore, I proposed that this gives us good reason to understand "uptake" as a general term that is necessary to illocutionary success at the minimum, and illocutionary and perlocutionary success at the most.

By shifting the conceptual and terminological groundwork in this way, I argued that we are presented with a clearer picture of the kind of pragmatic breakdown that Langton described in her original article (1993;2009). All of the necessary information for correct uptake is there for the addressee's use, but something happens between the utterance, and contextual information in front of them, that undermines their ability to accurately work out--or perceive--the speaker's intended speech act. I called this

phenomenon "illocutionary deafening" and suggested that the source of the dysfunction may be found in the collective interpretive resources, which would be explored in the following two chapters.

Chapter four served as an overview of the socio-linguistic literature on "cultural scripts" which were developed by Anna Wierzbicka and her colleagues to articulate shared values that are reflected in speech behavior. These scripts take sets of assumptions about what is and isn't good behavior, and applies them to what is good and what is bad to say. Cultural scripts both serve to guide appropriate behavior, and provide those within a culture with an interpretive frame, with which to understand the speech and acts of others. To illustrate what cultural scripts are, and their usefulness in interpreting behavior, we looked at an analysis by Jock Onn Wong, of Singaporean and Anglo perceptions of autonomy. Specifically, Wong looked at the difference of conventions in issuing directives. Singaporean speakers of English, Wong claimed, are not concerned with what the addressee wants but with what they can or cannot do. This is in opposition to the Anglo-English preference to recognize and maintain individual, personal autonomy. Specifically, he contrasts the difference in conventional forms of requests between the two cultures, that not only demonstrates the difference in values, but also the difference in interpretive resources that the two cultures may bring to any given context.

From here, we moved on to chapter five, which included three major sections: (1) addressing issues of generalization in cultural scripts literature (2) presenting an alternative view of linguistic injustice by Rebecca Kukla that illustrates in detail the way in which pragmatic dysfunction can exacerbate an oppressed person's status, and (3) the discussion and application of cultural scripts through three different examples. There were two very important moves made in this chapter: (a) the fleshing out of the phenomenological details of illocutionary deafening, by using Kukla's work on discursive injustice to understand how pragmatic dysfunction can enhance (and reproduce) oppression, and (b) the articulation of intra-cultural norms that serve to undermine a hearer's interpretive competency, and therefore lead to illocutionary deafening. These problematic cultural norms that restrict the range of acceptable behavior (linguistic or otherwise), means that when speakers employ conventional discursive resources, their utterances are distorted beyond recognition in a way that, as we discussed in the very last part of this chapter, becomes a matter of life or death. When there is a state monopoly on violence, and the values of the culture in question dramatically restrict the range of acceptable behavior for a group of people, this may lead to situations like Derek Williams'.

The systemic oppression of African-Americans, alongside the power of white supremacy, undermines white police addressees' abilities to take utterances such as "I can't breathe" at face-value. What was intended as an illocutionary act of requesting medical attention, was misunderstood to be an attempt to get out of going to jail. The system that led to the officers restraining William is the same system that undermined the officers' ability to recognize Williams' intended illocutionary act.

### **Further Research:**

There are a number of opportunities for further research on linguistic injustice. Setting aside empirical work on the use of implicit cultural scripts, along race, gender and class lines, such as we have discussed, one significant opportunity for research is in looking at the issue of race and policing in the United Kingdom. Not only does the United Kingdom have a markedly different public opinion of the problem of racism, as a whole—especially when compared to the United States—it also has a significantly different culture around policing. Because American police largely are not required to be trained in de-escalation



tactics, and are always armed with a gun, there seems to be the perception that police violence (at least among white Britons) is a non-issue for Britain. Though these beliefs seem easy enough to come across in conversation, there is in fact, not a lot of philosophical research on this topic. It would, I believe, be useful to look at police statistics and available case studies to see if there are similar issues which deaths in police custody that are related to interpretive pragmatic failures, as we have discussed here.